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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Analyzing Credit Needs and Graduation of Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) amends its regulations on the graduation of single family housing, farmer program, and community program borrowers. This action is taken to further define criteria by which a borrower is automatically selected for review of eligibility for graduation, including only program borrowers and eliminating borrowers who are under an approved liquidation plan, an additional payment agreement, bankruptcy or moratorium deferral, or have received debt writedown within the past 3 fiscal years, or who are limited resource borrowers. These borrowers are now eliminated by manual screening. The intended effect is to increase the efficiency of the graduation program by improving the automatic selection of borrowers and minimizing manual screening.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lucia A. McKinney, Loan Specialist, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, room 5309, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background

By October 1 of each year the FmHA Finance Office issues an automatically generated list of single family housing and farmer program borrowers who meet established criteria to be considered for graduation. Local FmHA servicing officials then screen the list and eliminate nonprogram borrowers, who are not required to graduate, and borrowers who are not financially able to graduate. Other borrowers eliminated from the list by manual screening are borrowers who are under an approved liquidation plan, in bankruptcy, under a moratorium or deferral or who have received debt write-down within the past 3 fiscal years, (deferment), Rural Housing borrowers under an additional payment agreement, or limited resource borrowers. Except for borrowers who are not financially able to graduate, the borrowers now eliminated by manual screening can be identified through FmHA automated systems, therefore, they can be automatically eliminated from the graduation list to simplify the selection and the screening process.

A requirement for review of insured Business and Industry loans and additional actions by certain FmHA staff has been added as well as editorial changes.

Programs Affected

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.404—Emergency Loans, No. 10.406—Farm Operating Loans, No. 10.407—Farm Ownership Loans, No. 10.410—Low Income Housing Loans (Section 502 Rural Housing loans), No. 10.416 Soil and Water Loans (SW Loans), No. 10.417—Very Low Income Housing Repair Loans and Grants, No. 10.418—Water and Waste Disposal Loans, No. 10.421—Indian Tribe and Tribal Corporation Loans, No. 10.422—Business and Industrial Loans, and No. 10.423—Community Facilities Loans.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR 3015, subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Policy Act of 1949, Public Law 91–90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

Discussion of Comments—July 17, 1990

Proposed Rule

The proposed rule published in the Federal Register (55 FR 29032) on July 17, 1990, provided for a 60-day comment period. One comment was received during the comment period. A summary of the comment received is presented as follows:

The commentor expressed concern that a copy of exhibit C of subpart F of part 1951 of this chapter did not appear in the **Federal Register** document. Farmers Home Administration typically does not publish exhibits in the **Federal Register**. This subpart is being revised to add exhibit C, which will be available to the public upon request. A copy of exhibit C was faxed to the commentor for their information.

List of Subjects in 7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

Therefore, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

2. Section 1951.252 is amended by redesignating paragraphs (c), (d) and (e) as (d), (e) and (f), revising paragraph (b) and adding paragraphs (c) and (g) to read as follows:

§ 1951.252 Definitions.

* * * * *

(b) *Graduation, Farmer Programs.* The payment in full of all Farmer Programs (FP) loans or all FP loans of one type (i.e. all loans made for chattel purposes or all loans made for real estate purposes) by refinancing, with other credit sources. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

(c) *Graduation, Other Programs.* The payment in full of all FmHA insured loans, before maturity, by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property.

* * * * *

(g) Graduation does not include credit which is guaranteed by the United States.

3. Section 1951.254 is amended by redesignating paragraphs (b)(2) and (b)(3) to (b)(3) to (b)(3) and (b)(4) and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 1951.254 Responsibility.

(a) * * *

(3) Graduation review and follow-up on all insured Business and Industry loans.

(b) * * *

(2) Meeting with lenders, that primarily lend in the District area, to discuss graduation and determine their criteria and interest in refinancing Community Program and Multiple Housing borrowers.

* * * * *

4. Section 1951.261 is amended by revising paragraphs (b)(1)(i) Introductory text, (b)(1)(i)(A), (b)(1)(ii), (b)(1)(iv), (b)(2), (d)(1) and adding a new last sentence to paragraph (d)(3) and revising the last sentence of paragraph (d)(4) to read as follows:

§ 1951.261 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(b) * * *

(1) * * *

(i) By October 1 of each year the Finance Office furnishes the County Office a list of active program borrowers who are to be considered for graduation.

(A) For Farmer Program and Single Family Housing borrowers the list will contain the names of borrowers who meet the criteria in Exhibit C of this regulation. Farmer Program borrowers having received debt write down within the past 3 fiscal years will not be included. The County Supervisor will add to the list Farmer Program borowers whose financial condition has substantially improved, except for those in bankruptcy. The list will contain borrowers who have ben indebted for at least 3 years for Emergency (EM) and Economic Emergency (EE) loans, Operating Loans ((OL), Farm Ownership (FO), Soil and Water (SW) and Softwood Timber (ST) loans. Length of time of the indebtedness will not be a determining factor on Single Family Housing borrowers.

* * * * *

(ii) For Community Programs except for Business and Industry loans which are handled by the B&I Chief, the District Director, using the Rural Community Facilities Tracking System (RCFTS) will generate a list by June 1 of each year, indicating borrowers who have been indebted for at least 5 years.

* * * * *

(iv) By October 1 of each year, the County Supervisor, using Management System Cards, will prepare a graduation review list indicating borrowers who have been indebted for at least 6 years under the RL Program.

(2) Borrowers' names with all outstanding loans will appear on the graduation review lists in accordance with the following:

(i) For Single Family Housing and Farmer Programs, borrowers are first selected for review based on the outstanding loan with the earliest closing date. The graduation review lists compiled in odd-numbered years will include the names of all borrowers whose oldest outstanding loan was closed during odd-numbered calendar years. The same procedure will apply to borrowers whose oldest outstanding loan closed during even-numbered calendar years. Once a borrower has appeared on the graduation review list, the borrower will automatically reappear on the list every 2 years unless screened out by criteria in exhibit C.

(ii) For Community and Business programs, graduation review lists will be compiled on the basis of the year in which the initial loan or transfer was closed. The graduation review lists compiled in odd-numbered years will include the names of all borrowers whose loans were closed during odd-numbered calendar years. The same procedure will apply to borrowers whose loans closed during even-numbered calendar years.

(iii) If the servicing official or County Committee has knowledge of any other borrower whose financial circumstances have changed sufficiently to warrant consideration, that borrower will also be included in the graduation review.

* * * * *

(d) * * *

(1) The servicing official will not review borrowers who are clearly unable to meet the established minimum lending criteria and/or policies set forth pursuant to paragraph (c) of this section.

* * * * *

(3) * * * Tenant notification requirements and restrictive use provisions, as outlined in § 1965.90 of this chapter must also be addressed.

(4) * * * If the borrower is eliminated from further review due to an inability to meet established minimum lending criteria and/or policies (see paragraph (d)(1) of this section), specific reasons will be included in the borrower's case file.

* * * * *

Dated: January 17, 1991.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-7080 Filed 3-25-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASO-25]

Amendment to Control Zone, Eglin AF Aux No. 9, Hurlburt Field, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment eliminates the arrival area extension southeast of the Hurlburt Field Airport. The extension was designed to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the standard instrument approach procedure (SIAP) utilizing the Eglin VOR. The Eglin VOR was destroyed by a tornado in 1989 and will not be rebuilt at the original location. Also, a minor correction is made in the latitude-longitude coordinate position of Hurlburt Field Airport.

EFFECTIVE DATE: 0901 u.t.c., June 27, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 18, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Hurlburt Field Airport Control Zone (55 FR 51924). The proposal would eliminate the arrival area extension southeast of the Hurlburt Field Airport which was originally designed to provide controlled airspace protection for IFR aircraft executing an instrument approach procedure predicated on the Eglin VOR. The VOR was destroyed by tornado in 1989 and will not be rebuilt at its original location; hence, the arrival area extension is no longer required. Additionally, a minor correction would be made in the latitude/longitude coordinate position of the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations eliminates the arrival area extension southeast of the Hurlburt Field Airport. The extension provided controlled airspace protection for IFR aircraft executing a VOR SIAP utilizing the Eglin VOR. The VOR has been destroyed by tornado and will not be rebuilt. Additionally, a minor correction is made to the lat./long. coordinate position of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexiblity Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Eglin AF Aux No. 9 Hurlburt Field, FL [Revised]

Within a 5-mile radius of Eglin AF Aux No. 9 Hurlburt Field (lat. 30°25'44" N., long. 86°41'20" W.).

Issued in East Point, Georgia, on February 25, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-7078 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANE-11]

Amendment to Control Zone; Nashua, NH, Boire Field

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the description of a control zone that was published in the Federal Register on August 23, 1988 (53 FR 32033), Airspace Docket No. 88-ANE-11.

EFFECTIVE DATE: March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Taylor, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA, 01803-5299; telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-19026, Airspace Docket No. 88-ANE-11, published on August 23, 1988 (53 FR 32033), amended the description of the Boire Field, Nashua, NH Control Zone. This action corrects an error in the description of the control zone.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description of the Boire Field, Nashua, NH Control Zone, as published in the **Federal Register** on August 23, 1988 (53 FR 32033), **Federal Register** Document 88-19026; page 32033), is corrected as follows:

§ 71.171 [Corrected]

2. **Nashua, NH [Corrected]**

By removing from the sixth line from the bottom of column 2, "249 °," and substituting "234 °."

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 91-7075 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement of financial reviews (17 CFR part 1). The following fee schedule for FY 1991 reflects the costs to the Commission of providing those services during fiscal years 1988, 1989 and 1990. Accordingly, the fee for applications for contract market designation will be increased to $15,000 from $14,500 and the fee for leverage commodity registration will remain at $4,500. The Commission also is publishing its schedule of annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association.

EFFECTIVE DATE: Contract Market Designation and Leverage Commodity Registration March 26, 1991. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the FY 1991 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1988—100%; FY 1989—100%; FY 1990—98%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1988, FY 1989 and FY 1990 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Applications for Contract Market Designation

A review of actual costs of processing applications for contract market designation for FY 1988, FY 1989 and FY 1990 revealed that the average costs for review of an application for contract market designation over the three year period was $15,357. Therefore, the fee for applications for contract market designation will be increased to $15,000, in accordance with the Commission's regulations (17 CFR part 5, appendix B).

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

III. Leverage Commodity Registration

No new applications for leverage commodity registration were recieved by the Commission in FY 1990. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Exchange	Actual average costs FY 1988–FY 1990	FY 1991 fee
Chicago Board of Trade	$266,082	$266,082
Chicago Mercantile Exchange	182,066	182,066
Commodity Exchange, Inc	134,534	134,534
Coffee, Sugar & Cocoa Exchange	114,009	114,009
New York Mercantile Exchange	123,563	123,563
New York Cotton Exchange	55,311	55,311
Kansas City Board of Trade	54,248	54,248
New York Futures Exchange	59,431	59,431
Minneapolis Grain Exchange	80,495	80,495
Philadelphia Board of Trade	3,487	3,487
Amex Commodities Corp	43	43
National Futures Association	339,712	[1] 254,784
Total	$1,412,983	$1,328,053

[1] This year the National Futures Association is assessed 75% of its actual three year costs. In FY 1992 the fee will be 100%. For a broader discussion of the fee charged to the National Futures Association, see 55 FR 19725 (May 11, 1990).

As in the calculation of the FY 1989 and FY 1990 fees, the FY 1991 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Leverage transaction merchants also are not considered "small entities" by the Commission because of the minimum financial requirements for registration. Registered

futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets, leverage transaction merchants or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on March 20, 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-7032 Filed 3-25-91; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. IC-18055]

Delegation of Authority to Director of Division of Investment Management

March 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to general organization and program management. The amendment delegates to the Director of the Division of Investment Management ("Director") the authority to grant permanent and, in some cases, temporary relief pursuant to section 9(c) of the Investment Company Act of 1940 ("Act") to applicants disqualified by section 9(a)(3) of the Act from serving in certain capacities with respect to investment companies.

EFFECTIVE DATE: March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026, or Max Berueffy, Branch Chief, at (202) 272-3016, Securities and Exchange Commission, Division of Investment Management (Stop 10-6), 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Congress has authorized the Commission generally to delegate, by published order or rule, any of its functions to any of its divisions or employees.[1] One of the Commission's functions is, upon application, to grant or deny orders of exemption under section 9(c) of the Act [15 U.S.C. 80a-9(c) (1988)], to persons who are ineligible, by reason of section 9(a) of the Act [15 U.S.C. 80a-9(a) (1988)], to serve or act in the capacity of "employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company." The Commission may grant such applications, either unconditionally or on an appropriate temporary or other conditional basis, if it finds that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant the application.

In recent months, the Commission has reviewed several applications for orders of exemption pursuant to section 9(c) of the Act for relief for a firm disqualified under section 9(a) because one of its employees is subject to a securities-related injunction.[2] Relief for ongoing violations of section 9, has generally been subject to four conditions:

(1) The disqualified employee will not be involved in investment company or investment advisory activities.

(2) The applicant must escrow certain fees, particularly investment advisory fees, backdated to July 1, 1990 until permanent relief is granted. The Division would require escrows of different types of fees and for different periods of time depending on particular circumstances.

(3) The applicant must take steps necessary to confirm that no other employee is subject to a statutory disqualification. A permanent order would not be granted until the Division has been notified in writing that these steps have been completed.

(4) Before permanent relief would be granted, the applicant's general counsel or chief executive officer must attest that he or she has reviewed the compliance procedures, that he or she reasonably believes those procedures have been fully implemented, and that those procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with the applicant in the future.

The Commission anticipates that future orders pursuant to section 9(c) will be subject to similar conditions.

In addition, several applicants have sought section 9(c) relief before acting as principal underwriter or investment adviser to an investment company because an employee subject to a securities-related injunction would disqualify them under section 9(a) from acting in any such capacity. The Commission expects that the Director would also require applicants seeking section 9(c) relief before the disqualification occurs to agree to the condition that the disqualified employee will not be involved in investment company or investment advisory activities. Finally, the Commission expects that generally the applicant, and in some cases, the disqualified employee should receive from any applicable self-regulatory organizations and from the Commission all approvals necessary in order for the disqualified employee to associate with the applicant before relief is granted to the applicant under section 9(c), or agree that such relief will be conditioned upon receipt of such approvals.

The circumstances under which the Commission has granted relief under section 9(c), and the conditions for that relief, have become standardized. Furthermore, because the basis for the application is the representation that the subject employee is not involved in any investment company activities, the Commission believes that, in some cases, it is appropriate to grant a temporary exemption pursuant to section 9(c) of the Act so that the applicant may continue to employ the employee and may act as principal underwriter, depositor or investment adviser to any investment company, pending final review and action upon the application for a permanent exemption.

Accordingly, the Commission has determined to delegate to the Director the authority to grant permanent and, in some cases, temporary relief to applicants disqualified under section 9(a)(3) where the disqualification arises solely because the applicant employs, or will employ, a person who has been convicted of any of the offenses, or enjoined from any of the activities, specified in section 9(a) (1) or (2) (a "Subject Employee"), and where the Subject Employee is not involved in any of the investment company activities from which the applicant is disqualified.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act, that this amendment relates solely to agency

[1] 15 U.S.C. 78d-1, 78d-2 (1988).

[2] *See, e.g.*, Smith Barney, Harris Upham & Co., Inc., Investment Company Act Release Nos. 17404 and 17404A (April 2 and April 11, 1990) (notice and temporary order), 17501 (May 21, 1990) (permanent order); PaineWebber Incorporated, Investment Company Act Release Nos. 17588 (July 16, 1990) (notice and temporary order), 17789 (October 10, 1990) (permanent order); Dean Witter Reynolds, Inc., Investment Company Act Release Nos. 17887 (November 29, 1990) (notice and temporary order), 18024 (temporary order).

organization, procedure or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are not necessary, nor is it necessary to publish the amendment thirty days prior to its effective date.

Text of the Amendment

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Accordingly, the Commission hereby amends part 200 of chapter II of title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

* * * * *

2. By adding paragraph (a)(9) to § 200.30–5 to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management

* * * * *

(a) * * *

(9) To issue—

(i) Notices, pursuant to Rule 0–5(a) (§ 270.0–5(a) of this chapter), with respect to applications for permanent orders under section 9(c) of the Act [15 U.S.C. 80a–9(c)], and, orders, pursuant to paragraph (a)(2) of this section, that exempt conditionally or unconditionally persons from section 9(a) of the Act [15 U.S.C. 80a–9(a)], if, on the basis of the facts then set forth in the application, it appears that:

(A) The prohibitions of section 9(a) of the Act, as applied to the applicant, may be unduly or disproportionately severe, or the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption;

(B) The prohibitions arise under section 9(a)(3) of the Act solely because the applicant employs, or will employ, a person who is disqualified under section 9(a) (1) or (2) of the Act; and,

(C) The employee does not and will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company, or acting as principal underwriter for any registered open-end company, registered unit investment trust or registered face amount certificate company.

(ii) Temporary orders under section 9(c) of the Act [15 U.S.C. 80a–9(c)], exempting conditionally or unconditionally persons from section 9(a) of the Act [15 U.S.C. 80a–9(a)], if, on the basis of the application, it appears that:

(A) The prohibitions arise under section 9(a)(3) of the Act solely because the applicant employs a person who is disqualified under section 9(a) (1) or (2) of the Act; and

(B) Applicant meets the requirements of paragraphs (a)(9)(i) (A) and (C) of this section.

* * * * *

By the Commission.

Margaret McFarland,

Deputy Secretary.

[FR Doc. 91–7085 Filed 3–25–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Privacy Act of 1974; Exemption of a System of Records From Certain Requirements

AGENCY: Financial Crimes Enforcement Network, Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Department of the Treasury, at 31 CFR 1.36, exempting certain systems of records from provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, to exempt a new system of records, the FinCEN Data Base, Treasury/DO .200, from certain provisions of the Privacy Act. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect certain information on individuals maintained in the system of records.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen R. Kroll, Legal Counsel, Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, VA, 22203, (703) 516–0534.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

By Treasury Department Order No. 105–08, issued on April 25, 1990, and published in the **Federal Register** on May 2, 1990 (55 FR 18433), the Secretary of the Treasury established the Financial Crimes Enforcement Network ("FinCEN"), as an office in the Office of the Assistant Secretary for Enforcement. FinCEN's mission is to provide a government-wide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.

Among FinCEN's principal responsibilities are (1) maintenance of a government-wide data access service that provides access, in accordance with legal requirements, to (A) information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050I of the Internal Revenue Code; (B) information regarding national and international currency flows; (C) other records and data maintained by other Federal, State, local and foreign agencies, including financial and other records developed in specific cases; and (D) other privately and publicly available information; and (2) analysis and dissemination of the available data for use in (A) identification of possible criminal targets to appropriate Federal, State, local, and foreign law enforcement agencies; (B) support of ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax forfeiture proceedings; (C) identification of possible instances of non-complaince with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act complaince; (D) evaluation of, and recommendation as to, possible uses of special currency reporting under 31 U.S.C. 5326; and (E) the determination of emerging trends and methods in money laundering and other financial crimes.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury published in the **Federal Register** on July 24, 1990 (55 FR 30074) a notice of a new system of records, the FinCEN Data Base, Treasury/DO .200, to be maintained by FinCEN. FinCEN is establishing this system of records to implement the mandate set forth in Treasury Department Order No. 105–08.

A notice of proposed rulemaking (55 FR 30005) exempting the FinCEN Data Base from certain provisions of the Privacy Act was published simultaneously with the publication of the notice of the new system of records.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from all but certain provisions of the Privacy Act, 5 U.S.C. 552a, "if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce cirme or to appprehend criminals, and the activities of prosecutors, courts, correctional probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

Under 5 U.S.C. 552a(k)(1), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 US.C. 552a if the system of records relates to matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and such matters are in fact properly classified pursuant to such Executive order.

Finally, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exmept a system of records from certain provisions of 5 U.S.C. 552a "if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section."

II. Summary of Comments

One comment was received concerning the proposal to exempt the FinCEN Data Base from provisions of the Privacy Act. That comment emphasized the interest of the public in preserving government accountability and requested that consideration be given to preserving public access to the Data Base and requiring FinCEN to collect only accurate and complete records. The policies endorsed by the comment are precisely those embodied in the Privacy Act, but that Act recognizes the need to balance the statutory protection afforded to individuals and the legitimate needs of law enforcement. The Treasury believes that the exemption proposed for the FinCEN Data Base similarly reflects the policies underlying the Privacy Act and is necessary if FinCEN is adequately and efficiently to perform its law enforcement responsiblities.

Accordingly, the Department of the Treasury has determined to exempt the FinCEN Data Base from certain provisions of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2) and the authority vested in the Assistant Secretary for Enforcement by 31 CFR 1.23(c). The reasons for exempting the system of records from each provision of 5 U.S.C. 552a for which an exemption is effective are set forth in the final rule itself.

Procedural Requirements

As required by Executive Order 12291, it has been determined that this rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of subpart C is amended by adding the following text immediately preceding the heading THE INTERNAL REVENUE SERVICE:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

Office of the Assistant Secretary for Enforcement

Financial Crimes Enforcement Network

Notice of Exempt System

(a) *In general.* The Assistant Secretary of the Treasury for Enforcement exempts the system of records entitled "FinCEN Data Base" (Treasury/DO .200) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(b) *Authority:* 5 U.S.C. 552a (j) and (k); 31 CFR 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records, maintained by the Financial Crimes Enforcement Network ("FinCEN"), an office reporting to the Assistant Secretary for Enforcement, from the following provisions of the Privacy Act of 1974:

5 U.S.C. 552a(c) (3) and (4);
5 U.S.C. 552a(d) (1), (2), (3) and (4);
5 U.S.C. 552a (e) (1), (2) and (3);
5 U.S.C. 552a(e)(4) (G), (H) and (I);
5 U.S.C. 552a(e) (5) and (8);
5 U.S.C. 552a(f); and
5 U.S.C. 552a(g).

(d) *Specific exemptions under 5 U.S.C. 552a(k)(1).* To the extent that the system of records may contain information subject to the provisions of 5 U.S.C. 552(b)(1), regarding national defense and foreign policy information classified pursuant to Executive order, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1):

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d) (1), (2), (3), and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4) (G), (H), and (I); and
5 U.S.C. 552a(f).

(e) *Specific exemptions under 5 U.S.C. 552a(k)(2).* To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the FinCEN Data Base, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2):

5 U.S.C. 552a(c)(3);
5 U.S.C. 552a(d) (1), (2), (3), and (4);
5 U.S.C. 552a(e)(1);
5 U.S.C. 552a(e)(4) (G), (H), and (I); and
5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a (j)(2) and (k)(2).* (1) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system

of records contains records pertaining to them. Application of these provisions to the FinCEN Data Base would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair FinCEN's ability to carry out its mission, since individuals could (i) take steps to avoid detection, (ii) inform associates that an investigation is in progress, (iii) learn the nature of the investigation, (iv) learn whether they are only suspects or identified as law violators, (v) begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or (vi) destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the FinCEN Data Base would compromise FinCEN's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the FinCEN Data Base would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by (A) discovering the facts that would form the basis for their arrest, (B) enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and (C) using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair FinCEN's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the FinCEN Data Base could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the FinCEN Data Base for the reasons outlined in paragraphs (f)(2) through (iv) of this paragraph, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with FinCEN and thus would restrict FinCEN's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that FinCEN may maintain in the FinCEN Data Base is restricted by law.

(3) 5 U.S.C. 552a (d) (2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (f)(2) of this section, these provisions should not apply to the FinCEN Data Base.

(4) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules proposed to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reeasons set out in paragraph (f)(3) of this section, this provision ought not apply to the FinCEN Data Base.

(5) 5 U.S.C. 552a(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by FinCEN. Making accountings of disclosures available to the subjects of an investigation would alter them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that FinCEN has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of FinCEN's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the FinCEN Data Base could compromise FinCEN's ability to provide useful information to law enforcement agencies, since revealing sources for the information could (i) disclose investigative techniques and procedures, (ii) result in threats or reprisals against informers by the subjects of investigations, and (iii) cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision to the FinCEN Data Base could impair FinCEN's ability to collect and disseminate valuable law enforcement information.

(i) At the time that FinCEN collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a FinCEN purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevent and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by FinCEN analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, FinCEN will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, FinCEN might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to FinCEN's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the FinCEN Data Base would impair FinCEN's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The FinCEN Data Base should be exempted from this provision to avoid impairing FinCEN's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the FinCEN Data Base would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict FinCEN's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because FinCEN may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The FinCEN Data Base should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The FinCEN Data Base should be exempted from this provision to the extent that the

civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules propose to exempt the FinCEN Data Base, since there should be no civil remedies for failure to comply with provisions from which FinCEN is exempted. Exemption from this provision will also protect FinCEN from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(g) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a (j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

* * * * *

Dated: March 5, 1991.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 91-7065 Filed 3-25-91; 8:45 am]

BILLING CODE 4810-25-M

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49856 (November 30, 1990), as amended at 56 FR 5351 (February 11, 1991) and 56 FR 10356 (March 11, 1991) (the "KACR"), to authorize transactions involving certain property in which the Government of Kuwait has an interest.

EFFECTIVE DATE: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Tel.: (202) 535-6020, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 535-9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: The KACR were originally published on November 30, 1990, to implement the sanctions imposed by the President in Executive Orders 12723 and 12725. In Executive Order 12723 and section 1 of Executive Order 12725, the President blocked all property and interests in property of the Government of Kuwait as a protective measure requested by the Government of Kuwait. Consistent with this blocking, § 570.201 of the KACR prohibits all transactions involving blocked property which is located in the United States or is in the possession or control of a United States person.

At the request of the Government of Kuwait, the Office of Foreign Assets Control of the Treasury Department ("FAC") is amending the KACR to permit transactions which involve certain blocked Government of Kuwait property located in the United States or in the possession or control of a United States person. Through this authorization, the amendment will effectively unblock the affected property. The property unblocked by this license includes the assets of the Government of Kuwait, its agencies, instrumentalities, and controlled entities including the Central Bank of Kuwait, but excludes all property or interests in property of seven blocked Kuwaiti banks—Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank. The seven banks, though blocked, have been licensed to utilize their blocked assets beginning March 18, 1991, to settle obligations arising prior to August 2, 1990.

Because the KACR involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 570

Banks, Banking, Blocking of assets. Finance, Kuwait.

For the reasons set forth in the preamble, 31 CFR part 570 is amended as follows:

PART 570—KUWAITI ASSETS CONTROL REGULATIONS

1. The authority citation for part 570 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101-513, 104 Stat. 2047-55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12723, 55 FR 31805 (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 570.523 is added to subpart E to read as follows:

§ 570.523 Authorization of certain new transactions with respect to blocked Government of Kuwait property.

(a) Nothwithstanding the provisions of § 570.201, all transactions affecting property or interests in property of the Government of Kuwait are hereby authorized on or after March 25, 1991, except as limited by paragraph (b) of this section.

(b) The authorization contained in this section does not apply to property or interests in property of the following entities: Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank.

Dated: March 19, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control

Approved: March 19, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-7260 Filed 3-22-91; 3:15 pm]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 103; FRL-3852-3]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the approval of a request by New Jersey to revise its State Implementation Plan (SIP) for ozone. This revision was prepared by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to implement appropriate actions in order to reduce statewide ozone levels as required under section 110 and Part D of the Clean Air Act. The revision incorporates into the New Jersey SIP a revised regulation, New Jersey Administrative Code 7:27, subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances," which will reduce

volatile organic compound emissions due to motor vehicle refueling at certain gasoline stations throughout the State.

EFFECTIVE DATE: This action will be effective April 25, 1991.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1005, New York, New York 10278.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1989 (54 FR 34798) the Environmental Protection Agency (EPA) published, in the **Federal Register**, a Notice of Proposed Rulemaking (NPR) concerning revisions to the New Jersey State Implementation Plan (SIP) for ozone. These revisions added to the SIP requirements (known as Stage II vapor recovery) for the control of gasoline vapor emissions resulting from the refueling of vehicles at gasoline service stations. These requirements were adopted by the State on December 23, 1987 as revisions to subchapter 16, title 7 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," and became effective on January 19, 1988.

Conclusion

The revisions and the rationale for EPA's proposed approval were explained in the NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR. No public comments were received on the NPR. Therefore, EPA is approving New Jersey's request to revise its SIP for ozone.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR part 51.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Note: Incorporation by Reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 1, 1991.

William K. Reilly,

Administrator.

Title 40, chapter I, subchapter C, part 52, Code of Federal regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart FF—New Jersey

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1570 is amended by adding new paragraph (c)(46) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(46) Revisions to the New Jersey State Implementation Plan (SIP) for ozone concerning motor vehicle refueling controls dated February 22, 1988, submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

Amendments to sections 16.1 and 16.3 of subchapter 16 of title 7 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," effective January 19, 1988.

(ii) Additional material:

(A) February 22, 1988 letter from Jorge Berkowitz, NJDEP, to Conrad Simon, EPA, requesting EPA approval of the amendments to subchapter 16.

(B) April 18, 1988 letter from Jorge Berkowitz, NJDEP, to Conrad Simon, EPA, providing copies of the test methods and permit approval conditions applicable to Stage II vapor recovery systems in New Jersey.

3. Section 52.1605 is amended by adding new entries, for sections 16.1 and 16.3, to the table in numerical order following the last entry under subchapter 16 as follows:

§ 52.1605 EPA—approved New Jersey State regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	* * *	* * *	* * *
Subchapter 16, control and prohibition of air pollution by volatile organic substances..	* * *		
Section 16.1	1/19/88	[Date and page citation of this notice]	
Section 16.3	1/19/88	[Date and page citation of this notice]	
* * *	* * *	* * *	* * *

[FR Doc. 91-7127 Filed 3-25-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 105; FRL-3868g]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Total Suspended Particulates

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing its final approval of revisions to the New York State Implementation Plan (SIP) to provide for the attainment and maintenance of the total suspended particulate matter (TSP) standards in the State's Niagara Frontier Air Quality Control Region (AQCR). EPA's approval of this SIP revision request will facilitate the eventual approval of a SIP in this area for particulate matter of ten microns or less in diameter (PM10).

DATES: This action will be effective April 25, 1991.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1118, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1118, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1990 (55 FR 4201), the Environmental Protection Agency (EPA) published in the **Federal Register** a Notice of Proposed Rulemaking (NPR) concerning revisions to the New York State Implementation Plan (SIP) for total suspended particulate matter (TSP) in the State's Niagara Frontier Air Quality Control Region (AQCR). These revisions effectively provide for the attainment and maintenance of the ambient air quality standards for TSP through the regulation of coke ovens (New York Code of Rules and Regulations, 6 NYCRR, part 214, adopted May 22, 1984), iron and steel processes (6 NYCRR part 216, adopted May 22, 1984), and through other specific measures for the control of fugitive dust. The revisions and the rationale for EPA's approval were described in EPA's proposal and will not be restated. Today's final action does not differ from that proposed on February 7, 1990.

Comments

One comment was received in support of EPA's proposed approval. However, this same commentor raised two issues which it believes were not adequately addressed in the NPR.

1. *Comment:* EPA's February 7, 1990 NPR is silent concerning the federal approval status of the 1984 version of 6 NYCRR part 214. The 1984 version of part 214 was submitted to EPA by the State on several occasions including with the January 5, 1987 SIP revision submittal.

Reply: The commentor is correct in stating that the January 5, 1987 New York SIP revision submittal included the latest version of part 214 (effective May 23, 1984). The January 5, 1987 submittal also included part 216, effective May 23, 1984. EPA's February 2, 1990 **Federal Register** notice did not explicitly state that revised parts 214 and 216 were included in the State's January 5, 1987 SIP submittal; however, the February 2, 1990 notice did state that the January 5, 1987 submittal answered the outstanding questions raised by EPA's review of the State's February 15, 1983 TSP SIP revision request and that together these submittals adequately provided for the attainment and maintenance of the ambient air quality standards for TSP in the Niagara Frontier. EPA's proposed approval was based upon the two submittals, including part 214 which was included in the January 5, 1987 submittal.

2. *Comment:* The commentor contends that the NPR misrepresented the approval status of the 1979 version of 6 NYCRR part 214 and concluded that the existing SIP requirement is a 1972 version of the regulation.

Reply: The comment made herein is irrelevant to the matter now before us. Through this notice we are federally approving the TSP SIP revision request for the Niagara Frontier Air Quality Control Region, submitted to EPA on January 5, 1987. This SIP revision request includes the 1984 version of 6 NYCRR part 214, and will become effective 30 days from this publication along with the rest of the SIP. Whether the 1972 version or the 1979 version of 6 NYCRR part 214 is presently federally enforceable under the New York State SIP is a specific issue now pending in a case between EPA and the commentor. This rulemaking is not the proper forum to resolve this issue. Furthermore, whichever version of 6 NYCRR part 214 is presently in effect will be superseded by the latest version of part 214 now being approved. Therefore, this issue is irrelevant to the final approval of the TSP SIP request.

Conclusion

EPA is approving the attainment and maintenance plan for the control of TSP in the Niagara Frontier Area as part of the New York SIP. This plan includes part 214, effective May 23, 1984, part 216, effective May 23, 1984, and other specific control measures for fugitive dust.

It should be noted that the version of part 214 now being approved includes an exceptions section (§ 214.10). Section 214.10(a) is a variance provision requiring EPA approval through a SIP revision before becoming applicable, § 214.10(b) expressly requires EPA approval in order to become effective, and § 214.10(c) allows an equivalent opacity for a source provided data proves that the mass emission levels required under part 214 are being met.

All equivalent opacity limits under § 214.10(c) must be approved by EPA as SIP revisions. These requirements are reflected in the comment section of a chart at 40 CFR 52.1679 which is being revised as a part of today's action.

Through the implementation of this plan, the State is providing for a significant decrease in TSP emissions in the area and improved ambient air quality levels. In addition, NYSDEC's modeling effort has demonstrated the attainment and continued maintenance of the federal air quality standards for TSP in the area. The finalization of this SIP allows New York to request a redesignation of this area from non-attainment to attainment for TSP and, subsequently, to request that the TSP SIP be considered as the PM10 SIP for this area.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to a state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 29, 1990.

Constantine Sidamon-Eristoff,

Regional Administrator, Region II.

Title 40, chapter I, subchapter C, part 52, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart HH—New York

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 is amended by adding new paragraph (c)(82) as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(82) Revisions to the New York State Implementation Plan (SIP) for total suspended particulates in the Niagara Frontier area, dated January 5, 1987 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference:

(A) Part 214 of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "Byproduct Coke Oven Batteries," adopted on April 23, 1984, and effective May 23, 1984.

(B) Part 216 of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "Iron And/Or Steel Processes," adopted on April 23, 1984, and effective on May 23, 1984.

(C) Consent Order No. 84–135, dated October 29, 1984, between NYSDEC and the Bethlehem Steel Corporation.

(D) Consent Order No. 84–131, dated October 18, 1984, between NYSDEC and the Bethlehem Steel Corporation.

(E) May 24, 1985 letter from Peter J. Burke, NYSDEC, to W.T. Birmingham, Bethlehem Steel Corporation, revising Consent Order No. 84–131.

(F) Test procedures for particulate matter source emissions testing at Bethenergy's Lackawanna Coke Oven Batteries 7, 8, and 9, prepared by SENES Consultants Limited, dated January 14, 1988.

(ii) Additional material:

(A) January 5, 1987 letter from Harry H. Hovey, Jr., NYSDEC, to Raymond Werner, EPA, providing an attainment and maintenance demonstration for TSP in the South Buffalo-Lackawanna area and requesting its inclusion as part of the TSP SIP for the Niagara Frontier.

(B) August 21, 1987 letter from Edward Davis, NYSDEC, to William S. Baker, EPA, responding to July 27, 1987 letter from EPA requesting additional information needed for the review of Niagara Frontier TSP SIP request.

(C) June 20, 1988 letter from Edward Davis, NYSDEC, to William S. Baker, EPA, responding to May 19, 1988 letter from EPA requesting additional information on test procedures for Bethenergy's Lackawanna Coke Oven Batteries.

§ 52.1673 [Amended]

3. In § 52.1673, paragraph (b) is removed.

4. Section 52.1679 is amended by revising the entries for part 214 and part 216 in the table as follows:

§ 52.1679 EPA—approved New York regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
* *	*	* *	* *
Part 214, byproduct coke oven batteries	5/23/84	[Date and citation of this notice]	Variances from otherwise applicable allowable emission rates adopted pursuant to §§ 214.10 (a), (b), or (c) become applicable only if approved by EPA as SIP revisions.
Part 216, iron and/or steel processes	5/23/84	[Date and citation of this notice]	
* *	*	* *	* *

[FR Doc. 91-7128 Filed 3-25-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3916-5]

Commonwealth of Kentucky; Schedule of Compliance for Modification of Kentucky's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of Kentucky's Compliance Schedule to Adopt Program Modifications for Non-HSWA Cluster V.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Kentucky to modify its program in accordance with 40 CFR 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Narindar Kumar, Chief, State Programs Section, 404-347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is equivalent to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Kentucky

Kentucky received final authorization of its hazardous waste program on January 31, 1985. (50 FR 2550, January 17, 1985) Kentucky received final authorization for Radioactive Mixed Waste equivalence on December 19, 1988 (53 FR 41164 October 20, 1988), and for Non-HSWA Cluster II equivalence on March 20, 1989 (54 FR 1940 January 18, 1989). Final Authorization for requirements prior to Non-HSWA Cluster I, Non-HSWA Cluster III and Availability of Information was received on May 15, 1989, (54 FR 10986 March 16, 1989). Today, EPA is publishing a compliance schedule for Kentucky to obtain program revisions for the following Federal program requirements:

Federal Regulations promulgated between July 1, 1988 and June 30, 1989 known as non-HSWA Cluster V.

Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption (53 FR 27290 July 19, 1988 Optional).

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems (53 FR 34079 September 2, 1988).

Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification (53 FR 35412 September 13, 1988).

Permit Modifications for Hazardous Waste Management Facilities (53 FR 37912 September 28, 1988 Optional).

Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities (53 FR 39720 October 11, 1988).

Permit Modifications for Hazardous Waste Management Facilities (53 FR 41649 October 24, 1988).

Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes (53 FR 43878 October 31, 1988 Optional).

Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Waste (53 FR 43881 October 31, 1988 Optional).

Standards for Generators of Hazardous Waste; Manifest Renewal (53 FR 45089 November 8, 1988 Optional).

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615 January 9, 1989).

Amendments to Requirements for Hazardous Waste Incinerator Permits (54 FR 4286 January 30, 1989).

Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting (54 FR 9596 March 7, 1989 Optional).

The Commonwealth of Kentucky has agreed to obtain the needed program revisions according to the following schedule:

Date	Interim milestone
September 15, 1991	Regulations drafted and submitted to Kentucky Department of Law for review and development of the Commissioner of Law's statement.
October 15, 1991	Draft regulations and statement from Commissioner of Law submitted to EPA. Regulation drafts submitted to Kentucky Environmental Quality Commission.
November 15, 1991	Regulation drafts filed with Kentucky Legislative Research Commission as proposed regulation changes. Public comment period opens.
December 1, 1991	Proposal published in Kentucky Administrative Register.
December 23, 1991	Public hearing and close of public comment period.
December 23, 1991	Comments due from EPA.
January 6, 1992	Statement of consideration responding to comments.
February 1, 1992	Proposed regulations republished in Kentucky Administrative Register.
Early February 1992	Review by Administrative Regulations Review Subcommittee.

Date	Interim milestone
Late February 1992.....	Review by Subcommittee on Agriculture and Natural Resources and effective date of regulations.

Kentucky expects to submit an application to EPA for authorization of the above mentioned program revisions by February 28, 1992.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: March 4, 1991.

Patrick M. Tobin,

Deputy, Regional Administrator.

[FR Doc. 91-6986 Filed 3-25-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amdt. E-268]

Sources of Supply for Goods and Services

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides clarification and guidance on current policies for using GSA supply sources. Changes to the Federal Property and Administrative Services Act of 1949, as amended, were enacted to reduce the dependency on appropriations and replace it with a method for achieving full cost recovery through appropriate pricing of items. This method is known as "industrial funding". Under industrial funding, agencies will be permitted greater latitude to purchase goods or services from the sources that are lowest in price.

EFFECTIVE DATE: March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Janet King or J.B. Willis, Strategic Planning Division (703-557-7571).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-26

Government property management.

For the reasons set out in the preamble, 41 CFR part 101-26 is amended as set forth below.

PART 101-26—PROCUREMENT SOURCES AND PROGRAM

1. The authority citation for part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

2. Section 101-26.000 is revised to read as follows:

§ 101-26.000 Scope of part.

This part prescribes policies and procedures which govern the procurement of personal property and nonpersonal services by Federal agencies from or through GSA supply sources as established by law or other competent authority. The specific subparts or sections covering the subject matter involved prescribe the extent to which the sources of supply are to be used by Government agencies. Certain civilian and military commissaries and nonappropriated fund activities are also eligible to use GSA supply sources for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA. Policy and procedures pertaining to purchasing of property or contracting for services from commercial sources, without recourse to established GSA supply sources, are provided in the Federal Acquisition Regulation (FAR) (48 CFR chapter 1).

Subpart 101-26.1—General

3. Section 101-26.100-1 is revised to read as follows:

§ 101-26.100-1 Procurement of lowest cost items.

GSA provides lines of similar items to meet particular end-use requirements under the GSA stock program, special order program (SOP) established source, and the Federal Supply Schedule program. Although these similar items may differ in terms of price, quality, and essential characteristics, they often can serve the same functional end-use procurement needs of the various ordering agencies. Therefore, in submitting requisitions or placing delivery orders for similar items obtainable from GSA sources, agencies shall utilize the source from which the lowest cost item can be obtained which will adequately serve the functional end-use purpose.

4. Section 101-26.100-2 is revised to read as follows:

§ 101-26.100-2 Request for waivers.

Waiver requests, when required by § 101-26.102-1 (special order program established source items), § 101-26.301 (GSA stock items) or § 101-26.401-3(b) (Federal Supply Schedule items), shall be submitted to the Commissioner, Federal Supply Service (F), General Services Administration, Washington, DC 20406. Waiver requests will be approved if considered justified. Approval of a waiver request does not constitute authority for a sole source procurement. Depending on the basis for the waiver request, each request shall contain the following information:

(a) Waiver requests based on determination that the GSA item is not of the requisite quality or will not serve the required functional end-use purpose of the agency requesting the waiver shall include the following information with each request:

(1) A complete description of the type of item needed to satisfy the requirement. Descriptive literature such as cuts, illustrations, drawings, and brochures which show the characteristics or construction of the type of item or an explanation of the operation should be furnished whenever possible.

(2) The item description and the stock number (NSN if possible) of the GSA item being compared. Inadequacies of the GSA items in performing the required functions.

(3) The quantity required. (If demand is recurrent, nonrecurrent, or unpredictable, so state.)

(4) The name and telephone number of the person to be contacted when questions arise concerning the request.

(5) Other pertinent data, when applicable.

(b) Waiver request based on determination that the GSA item can be purchased locally at a lower price shall include the following information with each request. However, the price alone of an item without other substantive consideration will not be considered sufficient justification to approve a waiver request.

(1) A complete description of the type of item needed to satisfy the requirement.

(2) The quantity required. (If demand is recurrent, nonrecurrent, or unpredictable, so state.)

(3) The destination of item to be delivered.

(4) The name and address of source.

(5) A price comparison with the GSA item, including the NSN of the GSA item. Cost comparisons shall include the agency administrative cost to effect the local purchase.

(6) The name and telephone number of the person to be contacted when questions arise concerning the request.

(7) Other pertinent data, when applicable.

(c) When the item is a Standard or optional form available from GSA stock, the provisions of § 101–26.302 apply.

(d) Agencies shall not initiate action to procure similar items from non-GSA sources until a request for a waiver has been requested from and approved by GSA. The fact that action to procure a similar item has been initiated will not influence GSA action on a request for waiver.

(e) Waivers are not required for items or services procured in accordance with the policy set forth in § 101–26.100–1 relating to the acquisition of the lowest cost item from GSA sources, § 101–26.401–4(f) relating to the purchase of products that are available at prices lower than the prices of identical products provided by multiple award Federal Supply Schedule contracts, or when an urgent requirement exists in accordance with FAR 6.302–2 (48 CFR 6.302–2).

5. Section 101–26.100–3 is revised to read as follows:

§ 101–26.100–3 Warranties.

Through its procurement sources and programs GSA provides for certain types of items and services which are covered by warranties. Such warranties allow ordering activities additional time after acceptance within which to assert a right to correct certain deficiencies in supplies or services furnished. The additional time period and the specific corrective actions for which the contractor is responsible are usually stated in the warranty. Items and services subject to warranties are normally identified by a warranty marking or notice. Such marking or notice will state that a warranty exists, its extent of coverage, its duration, and whom to notify concerning defects. Using activities shall take the following actions when items or services (except for automotive vehicles and components which are subject to the provisions of § 101–26.501–6) covered by warranty provisions are found to be defective during the warranty period.

(a) Activities shall attempt to resolve all complaints where a warranty is involved. If the contractor replaces the item or corrects the deficiency, a Standard Form (SF) 368, Product Quality Deficiency Report, in duplicate, shall be sent to the GSA Discrepancy Reports Center (6FR), 1500 East Bannister Road, Kansas City, MO 64131–3088. The resolution of the case should be clearly stated in the text of the SF 368. This information will be maintained as a quality history file for use in future procurements.

(b) If the contractor refuses to correct, or fails to replace, a defective item or an aspect of service under the warranty, an SF 368, in duplicate, along with copies of all pertinent correspondence, shall be submitted to the contracting officer in the appropriate GSA commodity center for necessary action. The address of the contracting officer is contained in the contract/purchase order, except for schedule items where the address is shown in the Federal Supply Schedule.

6. Section 101–26.102–1 is revised to read as follows:

§ 101–26.102–1 General.

The special buying services of GSA are performed through the GSA special order program (SOP). The SOP allows an agency to obtain items not included in either the GSA stock or Federal Supply Schedule program. All executive agencies within the United States (including Hawaii and Alaska), in order to maximize the use of the Government's centralized supply system, shall request SOP items by submitting requisitions for GSA centrally managed items to GSA. GSA will process all requisitions for SOP items, regardless of total line item value, from activities electing to purchase from GSA. If an agency determines that alternative sources are more favorable, procurement from other sources is authorized: Provided, that the dollar thresholds and criteria outlined in § 101–26.301(b)(1) through (3) are followed.

7. Section 101–26.105 is revised to read as follows:

§ 101–26.105 Justification to support negotiated procurement by GSA for other agencies.

When a requisition submitted by an agency to GSA requires procurement without providing for full and open competition, the agency submitting the requisition will be so notified and required to furnish specific information to assist GSA in preparing the required written justification. The GSA contracting officer will defer procurement action pending receipt of the requested information. If the requisitioning agency has prior knowledge that a requisition will require procurement without providing for full and open competition (e.g., sole source acquisition), sufficient information shall be included with the requisition to allow GSA to justify the procurement. Specifically, the information must include the following:

(a) The specific needs to be satisfied in terms of identified tasks or work processes;

(b) The requirements that generate the specific needs;

(c) The characteristics of the designated item that enable it to satisfy the specific needs, if a specific source(s) is requested;

(d) The identification of other items evaluated and, for each, a statement of the characteristics (or lack thereof) which preclude their satisfying the specific needs, if a specific source(s) is requested;

(e) The citation of the applicable law, if any, authorizing other than full and open competition (see FAR 6.302 (48 CFR 6.302); and

(f) Any required certifications, pursuant to FAR 6.303–2(b) (48 CFR 6.303–2(b)), that supporting data is complete and accurate.

8. Section 101–26.107 is revised to read as follows:

§ 101–26.107 Priorities for use of supply sources.

(a) Executive agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority:

(1) *Supplies.* (i) Agency inventories;

(ii) Excess from other agencies;

(iii) Federal Prison Industries, Inc.;

(iv) Procurement lists of products available from the Committee for Purchase from the Blind and Other Severely Handicapped;

(v) Wholesale supply sources, such as the stock or special order established source programs of the General Services Administration (GSA) (see subpart 101–26.3 of this part and § 101–26.102), the Defense Logistics Agency (see subpart 101–26.6 of this part), the Department of Veterans Affairs (see § 101–26.704), and military inventory control points (see § 101–26.606);

(vi) Mandatory Federal Supply Schedules;

(vii) Optional use Federal Supply Schedules; and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped;

(ii) Mandatory Federal Supply Schedules;

(iii) Optional use Federal Supply Schedules; and

(iv) Federal Prison Industries, Inc., or other commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in § 101–26.301 and in an unusual and compelling urgency as prescribed in FAR 6.302–2 (48 CFR 6.302–2) and § 101–25.101–5 of this chapter.

Subpart 101–26.3—Procurement of GSA Stock Items

9. Section 101–26.301 is revised to read as follows:

§ 101–26.301 Applicability.

All executive agencies within the United States (including Hawaii and Alaska), in order to maximize the use of the Government's centralized supply system, shall requisition GSA stock items in accordance with the following:

(a) When the requirement is for Standard and optional forms, an item produced by the Federal Prison Industries, Inc. (FPI), or an item listed in the procurement list published by the Committee for Purchase from the Blind and Other Severely Handicapped (NIB–NISH), the dollar thresholds and language indicated in paragraph (b) of this section are not applicable and acquisition of such items continues to be as set forth in the applicable sections of the Federal Acquisition Regulation, Federal Property Management Regulations and other appropriate regulations. In order to identify FPI/NIB–NISH items stocked by GSA, they are marked with an asterisk in the GSA Supply Catalog NSN index.

(b) GSA will process all requisitions for stock items, regardless of total line item value, from activities electing to purchase from GSA. If an agency determines that alternative sources are more favorable, the following guidelines shall apply. However, the price alone of an item without other substantive consideration will not be considered as sufficient justification to use alternative sources. (These guidelines also apply to the procurement of special order program (SOP) established source, see § 101–26.102–1.)

(1) When the total value of the line item requirement is less than $100, procurement from other sources is authorized.

(2) When the total value of the line item requirement is $100 or more, but less than $5,000, procurement from other sources is authorized: provided, that a written justification shall be prepared and placed in the purchase file stating that such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. Cost comparisons shall include the agency administrative cost to effect a local purchase.

(3) For total line item requirements of $5,000 and over, agencies shall submit a requisition to GSA unless a waiver has been approved by GSA. Request for waivers shall be submitted in accordance with § 101–26.100–2.

(c) Agencies shall not divide requisitions to avoid higher threshold documentation requirements.

(d) In authorizing procurements in accordance with paragraph (b)(2) of this section, agencies shall reimburse GSA for any cost arising out of breach of a GSA contract, where sufficient justification is not documented in their procurement files.

10. Section 101–26.302 is revised to read as follows:

§ 101–26.302 Standard and optional forms.

Agencies shall obtain Standard and optional forms by requisitioning them from GSA (FSS) unless the forms have been approved by GSA (KMPS) to be stocked and distributed by the promulgating agency or to be reproduced locally. Assistance or information on the forms management program may be obtained by contacting GSA (KMPS), Washington, DC 20405. (See part 201–45, subpart 201–45.5 of this chapter.)

(a) For purposes of economy, existing stocks are depleted prior to issuance of revisions unless the promulgating agency determines previous editions unusable and obsolete.

(b) Forms or form assemblies which deviate from the standard and optional forms listed in the GSA Supply Catalog have restricted use and are not stocked. Agencies requiring such forms shall prepare and transmit a Standard Form 1, Printing and Binding Requisition, or Standard Form 1–C, Printing and Binding Requisition for Specialty Items, to the General Services Administration, Federal Supply Service (FCNI), Washington, DC 20406, for review and submission to GPO. Prior approval of GSA (KMPS) is required whenever the content or construction of a form is altered or modified. Requests for such exceptions may be obtained by submission of a SF 152, Requests for Clearance of a Standard or Optional Form or Exception, to GSA (KMPS), with appropriate justification.

(c) Certain standard forms are serially numbered and are to be accounted for to prevent possible fraudulent use. The General Accounting Office (GAO) requires accurate accountability records to be maintained for such items by applicable agencies. GSA forwards a receipt verification card with each shipment of accountable forms. The receiving agency is responsible for verifying receipt of the serially numbered forms in the shipment by returning the card to the address preprinted on the card. See § 101–41.308 of this chapter for information governing agency control and disposition of unused U.S. Government Bills of Lading (GBL's).

(d) Standard and optional forms which are excess to the needs of an agency shall be reported to GSA in the same manner as other excess personal property pursuant to part 101–43 of this chapter. Obsolete forms shall be disposed of under the provisions of part 101–45 of this chapter.

Dated: January 23, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–6717 Filed 3–25–91; 8:45 am]

BILLING CODE 6820–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1808, 1825, 1827, 1828, 1835, 1842, 1846, 1849, and 1852

[NASA FAR Supplement Directive 89–7]

RIN 2700–AB08

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Address changes for submittal of deviation requests and for the NASA Scientific and Technical Information Facility; (2) providing procedures for contracting officers to follow in contacting GSA about the acquisition of wellhead natural gas; (3) use of statutorily-required procedures, contained in the Defense FAR Supplement, for acquisitions funded by the Strategic Defense Initiative Organization; (4) delegation of authority to procurement officers to waive inclusion of the FAR contract clause entitled "Insurance—Liability to Third

Parties;" (5) revision of NFS clauses to conform with changes to NASA regulations on the Mission Critical Space Systems Personnel Reliability Program; and (6) implementation of quick-closeout procedures revised by Federal Acquisition Regulation Circular (FAC) 90–3.

EFFECTIVE DATE: March 31, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, telephone (202) 453–8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700–0042.

List of Subjects in 48 CFR parts 1801, 1804, 1808, 1825, 1827, 1828, 1835, 1842, 1846, 1849, and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1804, 1808, 1825, 1827, 1828, 1835, 1842, 1846, 1849, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.4—[Amended]

2. Subpart 1801.4 is amended as set forth below:

1801.402 [Amended]

a. In section 1801.402, "Executive Order," is revised to read "Executive Order."

1801.471 [Amended]

b. In section 1801.471, paragraph (a)(1), "(Code HP)" is revised to read "(Code HS)".

PART 1804—ADMINISTRATIVE MATTERS

1804.202 [Amended]

3. In section 1804.202, paragraph (a), the mailing address "P.O. Box 8757, Baltimore/Washington International Airport, MD 21240" is revised to read "800 Elkridge Landing Road, Linthicum Heights, MD 21090."

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Section 1808.304–573 is revised to read as set forth below:

1808.304–573 Authorization for procurement of wellhead natural gas.

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in FAR subpart 8.3. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 8.304.

(b) GSA provides assistance to Federal agencies in the procurement of natural gas wellhead supplies. Contracting officers requiring assistance in determining the feasibility of procuring natural gas supplies on a facility by facility basis may contact General Services Administration, Public Building Services, Office of Procurement, Public Utilities Services Division, Code PPU (FTS 241–0901 or Commercial (202) 501–0901). In contacting GSA, contracting officers should provide the data stated in FAR 8.307 pertaining to present gas usage exceeding 50,000 Mcf per year. GSA has found that 50,000 Mcf is the annual volume below which wellhead purchases may not be economically feasible.

PART 1825—FOREIGN ACQUISITION

5. Part 1825 is amended as set forth below:

1825.903 [Amended]

a. In section 1825.903, the reference "FAR 25.903(a)(2)" is revised to read "FAR 25.901(c)(1)(i)(B)."

b. Subpart 1825.72 is added to read as set forth below:

Subpart 1825.72—Limitation on Strategic Defense Initiative (SDI) Contracting

1825.7200 Procedures.

Subpart 1825.72—Limitation on Strategic Defense Initiative (SDI) Contracting

1825.7200 Procedures.

Public Law 110–180, section 222, forbids the use of funds appropriated to or for the use of the DOD, with certain exceptions, for the award of any contract with a foreign government or firm when the contract is for research, development, test, or evaluation (RDTE) in connection with the Strategic Defense Initiative (SDI). Therefore, when contracting with DOD SDI funds, NASA contracting officers shall follow the policies and procedures set forth in section 225.7013 of the Defense Federal Acquisition Regulation Supplement (DFARS). If an award is based on a determination required by paragraph (d)(1) of DFARS 225.7013, the contracting officer shall, within 30 days of award, send copies of the determination to the SDI Organization (SDIO) and to the Procurement Policy Division (HP), NASA, Washington, DC 20546.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

6. Subpart 1827.4 is amended as set forth belows:

1827.404 [Amended]

a. In section 1827.404, paragraph (e)(1), "NASA Management Instruction 2210.2" is revised to read "NASA Handbook 2200.2."

1827.406 [Amended]

b. In section 1827.406, paragraph (b)(1)(v), the mailing address "P.O. Box 8757, Baltimore/Washington

International Airport, MD 21240" is revised to read "800 Elkridge Landing Road, Linthicum Heights, MD 21090."

PART 1828—BONDS AND INSURANCE

7. Subpart 1828.3 is amended by revising section 1828.311–2 to read as set forth below:

§ 1828.311–2 Contract clause.

The contracting officer shall insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, as prescribed in FAR 28.311–2 unless waived by the procurement officer.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

8. Part 1835 is amended by revising section 1835.071 to read as set forth below:

§ 1835.071 Mission Critical Space Systems Personnel Reliability Program.

The Mission Critical Space Systems are national resources providing the capability to support a wide range of scientific, applications, commercial, defense, and international uses. Criteria and procedures for assuring the highest standards of reliability in personnel assigned to mission-critical positions in connection with the Space Transportation System are set forth in NMI 8610.13, Mission Critical Space Systems Personnel Reliability Program (see 1846.270(a)).

PART 1842—CONTRACT ADMINISTRATION

9. Sections 1842.708, 1842.708–70, 1842.708–71, and 1842.708–72 are added to read as follows:

§ 1842.708 Quick-closeout procedure.

§ 1842.708–70 NASA policy.

The use of quick-closeout procedures is strongly encouraged for contracts that are physically complete, the amount of unsettled indirect costs applicable to any one contract does not exceed $500,000, and an individual contract's value, excluding fee, is not greater than $2,000,000. Quick closeout may be used for contracts above $2,000,000 with the prior approval of the installation procurement officer. The $2,000,000 contract limitation supersedes the 15 percent parameter of FAR 42.708(a)(2)(ii), which does not apply to NASA.

§ 1842.708–71 Factors to be considered.

Factors to be considered in deciding whether quick closeout is appropriate, include:

(a) Whether the use of quick closeout will adversely affect the negotiation of final indirect cost rates in those cases where the responsibility for negotiating indirect cost rates has been delegated or falls under the cognizance of another agency.

(b) Prior experience with the contractor, for example, the amount of questioned and/or disallowed costs for prior fiscal years.

(c) Whether there are any outstanding Cost Accounting Standards or accounting system deficiencies that would have a bearing on the determination of direct costs and final indirect cost rates.

(d) The extent of the contractor's Government contracting experience.

(e) The number of years final indirect costs have not been settled.

(f) The amount of unaudited contractor claimed costs (direct and indirect) for contract(s) being considered.

(g) The number and value of other NASA contracts with the contractor having unaudited costs for the same fiscal years.

(h) Whether audits will be performed and/or indirect cost rates finalized within a reasonable time. Audits are not to be requested if a determination is made to use quick closeout.

§ 1842.708–72 Procedures.

After a decision is made that the use of quick closeout is appropriate, the contracting officer shall conduct the following:

(a) Seek a written agreement from the contractor to participate in the quick-closeout process under FAR 42.708 for the selected contract(s). Also, request the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved.

(b) Notify the cognizant audit activity in writing regarding the decision to use quick closeout. Identify the contract(s) in question and request that they provide the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit question, and disallowed costs. Request this information from the contractor only when the cognizant audit acitivity is unable to provide the information. In all cases, request the cognizant audit activity to provide any information that could adversely impact the decision to use quick-closeout procedures. The quick-closeout process should not proceed without such a response.

(c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information obtained from the contractor or the cognizant audit activity, and develop a negotiation position.

(d) Based on an analysis of all the available information, final indirect cost rates should be established using one of the following rates:

(1) The contracts ceiling indirect cost rates, if applicable, and if less than paragraphs(d) (2) through (6) of this section.

(2) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (d) (3) through (6) of this section.

(3) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.

(4) The contractor's negotiated billing rates, if less than paragraphs (d) (5) or (6) of this section.

(5) The previous year's final rates.

(6) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established.

(e) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

(f) For those contracts where the indirect cost rate negotiation function was delegated or falls under the cognizance of another agency, send a copy of the agreement to that office.

(g) If agreement cannot be reached with the contractor, a determination shall be made as to whether a final contracting officer decision should be issued, or whether the closeout procedures specified in FAR 4.804 and NFS 1804.804 will be followed.

PART 1846—QUALITY ASSURANCE

10. Subpart 1846.2 is amended by revising section 1846.270, paragraph (a), to read as set forth below:

§ 1846.270 Contract clauses for space flight-related operations.

(a) The contracting officer shall insert the clause at 1852.246–70, Mission Critical Space Systems Personnel Reliability Program, in solicitations and contracts involving critical positions in accordance with NASA Management Instruction 8610.13. The clause, however, shall not be used in procurements for flight crew members or payload specialists when these individuals are covered by other NASA Management Instructions that have screening requirements equivalent to those in NMI 8610.13 (for example, NMI

7100.16, Payload Specialists for Space Transportation System (STS) Missions).

* * * * *

PART 1849—TERMINATION OF CONTRACTS

1849.101-70 [Amended]

11. In section 1849.101-70(a)(3), the word "recession" is revised to read "recision".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Part 1852 is amended as set forth below:

1852.208-70 [Amended]

a. In section 1852.208-70, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(a)."

1852.208-71 [Amended]

b. In section 1852.208-71, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(b)."

1852.208-72 [Amended]

c. In section 1852.208-72, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(c)."

1852.208-73 [Amended]

d. In section 1852.208-73, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(d)."

1852.208-74 [Amended]

e. In section 1852.208-74, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(e)."

1852.208-75 [Amended]

f. In section 1852.208-75, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(f)."

1852.208-76 [Amended]

g. In section 1852.208-76, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(b)."

h. In section 1852.208-77, the introductory paragraph is revised to read as follows:

1852.208-77 Connection charge.

As prescribed in 1808.309(g), insert the following clause, and attach Appendix C to the contract:

* * * * *

1852.208-78 [Amended]

i. In section 1852.208-78, the reference "1808.309" is revised to read "1808.309(h)."

1852.208-79 [Amended]

j. In section 1852.208-79, the reference "1808.309" in the introductory paragraph is revised to read "1808.309(i)."

1852.210-70 [Amended]

k. In section 1852.210-70, the reference "1810.011" in the introductory paragraph is revised to read "1810.011-70(a)."

1852.210-75 [Amended]

l. In section 1852.210-75, the date "(SEP 1990)" is added to the titles of Alternates I and II.

1852.215-79 [Amended]

m. In section 1852.215-79, the reference "1815.708-70" in the introductory paragraph is revised to read "1815.708-70(b)."

1852.216-76 [Amended]

n. In section 1852.216-76, the reference "1816.405" in the introductory paragraph is revised to read "1816.405-70(a)."

1852.216-83 [Amended]

o. In section 1852.216-83, the reference "1816.405(b)" in the introductory paragraph is revised to read "1816.405-70(b)."

1852.223-70 [Amended]

p. In section 1852.223-70, the reference "1823.7004" in the introductory paragraph is revised to read "1823.7004(c)."

1852.225-72 [Amended]

q. In section 1852.225-72, the reference "1825.407" in the introductory paragraph is revised to read "1825.407-70."

1852.242-71 [Amended]

r. In section 1852.242-71, the reference "1842.7002(a)" in the introductory paragraph is revised to read "1842.7002."

s. The introductory paragraph to section 1852.243-70 is revised to read as set forth below:

1852.243-70 Engineering change proposals.

As prescribed in 1843.205-70(a), insert the following clause, modified to suit contract type:

* * * * *

1852.246-70 [Amended]

t. The title of section 1852.246-70 is revised to read "Mission Critical Space Systems Personnel Reliability Program."

u. The title of the clause to section 1852.246-70 is revised to read "Critical Space Systems Personnel Reliability Program (MAR 1991)."

v. In section 1852.246-70, in paragraph (a) of the clause, the phrase "STS Personnel Reliability Program," is revised to read "Mission Critical Space Systems Personnel Reliability Program,".

w. In section 1852.246-70, in paragraph (b) of the clause, the phrase "to be competent and reliable" is revised to read "to be suitable, competent, and reliable".

1852.250-70 [Amended]

x. In section 1852.250-70, the reference "1850.403-370(a)(1)" in the introductory paragraph is revised to read "1850.403-370(a)."

[FR Doc. 91-7064 Filed 3-25-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 90-24 Notice 2]

RIN 2127-AD31

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with NHTSA, unless the agency exempts the insurer from filing such reports. The law stipulates that NHTSA can only exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurer's report will not significantly contribute to carrying out the purposes of title VI. To carry out these statutory provisions, the agency has exempted those companies that are lawfully eligible to be exempted and is hereby publishing an updated listing of those companies subject to the reporting requirements. Those insurance companies previously included on the list and which remain on the list are required to file reports for the 1989 calendar year. Companies added to the list are required to file beginning with the reports for calendar year 1990. Any insurance company removed from the list is not required to file a report for the 1989 calendar year.

EFFECTIVE DATE: The final rule on this subject will be effective April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–4808.

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C 2032) requires certain passenger motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries of motor vehicles, the rating rules used by the insurers to establish premiums for comprehensive coverage, the actions taken by insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for one percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 612(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, and appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually.

In continuing fulfillment of that pledge, on October 10, 1990 (55 FR 41241), the agency published a notice of proposed rulemaking (NPRM) to, among other things, update appendices A and B. For appendix A, two companies, Continental Group and Fireman's Fund Group, were proposed to be deleted and one company, Hanover Insurance Companies, not previously listed in appendix A, was proposed to be added. For appendix B, two additional companies were proposed to be added. The Indiana Farm Bureau Group would be required to report on their activities for the State of Indiana and Erie Insurance Group would be required to report on their activities for the State of Pennsylvania.

In response to the NPRM, the agency received the following comments on the proposed changes to appendices A and B. The National Automotive Theft Bureau (NATB) requested clarification by the agency on the time frame during which a newly added company to the appendices must submit its report. Along the same lines, Erie Insurance Group, which had been proposed to be added to appendix B, wrote to request an extension of time to submit their report.

Previous notices on part 544 had stated that a company not formerly subject to the reporting requirements that is added to one of the appendices may file a report in the year following the year in which its name is added to the appendices. (See e.g., 52 FR 59, at 62.) Hanover Insurance Companies (added to appendix A), the Indiana Farm Bureau Group, and Erie Insurance Group (added to appendix B), and Rental Concepts, Inc. and GE Capital Auto Lease, Inc. (added to appendix C), are required to file beginning with the reports for calendar year 1990. This is reflected in the appendices.

Crum & Forster requested a partial exemption from reporting based on the fact that it expects its future market share to decrease significantly from the 1988 market share as disclosed by A.M. Best. The sharp drop is due to the fact the Crum & Forster will eliminate its automotive insurance market for individuals. Crum & Forster made the announcement in April 1990, and began to inform customers of the intent not to renew standard automotive policies beginning on July 23, 1990. Crum & Forster stated that they expected the organization to not be included in future NHTSA requirements to report, and requested a prospective exemption because of its declining volume in automobile insurance and the significant cost of preparing the NHTSA reports. The agency believes that all these described actions will only affect Crum & Forster's market share in the future, and will not change the fact that as reported in the A.M. Best data for 1988, Crum & Forster had at least one percent of the national market for motor vehicle insurance premiums. Therefore, Crum & Forster must still report on its activities for calendar year 1989.

Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 612 of the Act to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passengers motor vehicles. (section 612(a)(3)). Section 612(a)(4) of the Act authorizes the agency to exempt certain insurers from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

In a final rule dated June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency made this exemption because it believed that reports from a representative sample of rental and leasing companies will provide the agency with necessary information to allow it to fulfill all its obligations under title VI of the Cost Savings Act. NHTSA concluded that reports by many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary

burden on the vast majority of the companies presently subject to the reporting requirements. As a result of the final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544 was added.

NHTSA's October 10, 1990 NPRM proposed to update appendix C. Some companies' names were changed and it was proposed that the listings in appendix C reflect these changes. In addition, it was proposed that two new companies, GE Capital Auto Lease, Inc., and Rental Concepts, Inc., be included in appendix C.

In response to the NPRM, the agency received the following comment on appendix C. Enterprise Rent-A-Car (Enterprise) requested the agency to exempt it from complying with the reporting requirements. Enterprise stated that it was not a self-insured company, noting that of the 90,000 vehicles in its rental fleet, 75 percent, or 67,500 are insured through an insurance company. In addition, of its 30,000 vehicles for lease, approximately 70 percent, or 21,000, are covered by a lessor's insurance coverage.

The agency notes that since over half of Enterprise's fleet size is covered by an insurance company or by a lessor's coverage, it does not meet the requirement to report, since approximately 31,500 units are self-insured and the agency requires a self-insured fleet of 50,000 or more before reporting requirements apply. Therefore, NHTSA is deleting Enterprise's name from appendix C. However, in the future, if the level of insurance coverage of Enterprise's fleet should change, and its fleet exceeds the threshold, NHTSA would propose to add Enterprise's name to appendix C.

Effective Date

This rule is effective 30 days after publication in the **Federal Register**. Section 612 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1989 calendar year no later than October 25, 1990. Most of the companies included in the Appendices were previously listed and were therefore already subject to this requirement. However, NHTSA recognizes that the statutory date for filling those reports has passed. Because this final rule listing is published after the statutory date has passed, the agency will accept as timely insurer reports for the 1989 calendar year that are filed within 30 days after this listing is published. The new companies added to the Appendices are not required to report until October 25, 1991, for calendar year 1990.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for 49 CFR part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it will cost any company that is added to appendix A about $50,000, any company added to appendix B about $20,000, and any company added to appendix C about $5,770. One company is added to appendix A, two companies to appendix B, and two companies to appendix C. One company is also deleted from appendix C. The combined cost increase for the companies which are added to the Appendices is estimated to be approximately $101,540. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR part 544. Interested persons may wish to examine that evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling at (202) 366-4949.

2. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) These requirements have been approved through December 31, 1990 (OMB approval number 2127-0547). A request for extension of this information collection authority is pending at OMB.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. Section 612(a)(5)(C) of the Theft Act defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. In addition, the agency has exempted, by rule, all "self insured rental and leasing companies" that have fleets in excess of 50,000 vehicles.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 is revised to read as follows:

Appendix A to Part 544—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CIGNA Group
CNA Insurance Companies
Crum and Forster Companies
Farmers Insurance Group
Geico Corporation Group
Hanover Insurance Companies [1]
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Insurance Group
United States F&G Group
USAA Group

3. Appendix B to part 544 is revised to read as follows:

Appendix B to Part 544—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Island Insurance Group (Hawaii)
Indiana Farm Bureau Group (Indiana) [1]
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Insurance Companies (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Casuality Group (Mississippi)
Erie Insurance Group (Pennsylvania) [1]
Amica Mutual Insurance Company (Rhode Island)
Concord Group Insurance Companies (Vermont)

4. Appendix C to part 544 is revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchises) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
Automotive Rentals, Inc. (subsidiary of ARI, Inc.)
Avis Car Leasing—USA (subsidiary of Avis, Inc.)
Avis Rent-A-Car System, Inc. (subsidiary of Avis, Inc.)
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
GE Capital Auto Lease, Inc.
GE Capital Fleet Services[1]
Hertz Penske Truck Leasing, Inc. (subsidiary fo Hertz Corporation)
Hertz Rent-A-Car (subsidiary of Hertz Corporation)
Lease Plan USA
Lend Lease Cars
McCullagh Leasing
National Car Rental System, Inc.
PHH Fleet America
Rental Concepts, Inc.[1]
Ryder Truck Rental (both rental and leasing operations)
Security Pacific Auto Finance
U-Haul International, Inc. (subsidiary of AMERCO)
United States Fleet Leasing, Inc.
Wheels Inc.

[1] Beginning with report for calendar year 1990.

Issue date: March 20, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-7025 Filed 3-25-91; 8:45 am]
BILLING CODE 4910-59-M

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49 CFR Part 571

RIN 2127-AE08

[Docket No. 85-15; Notice 9]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule deletes the impact test for replaceable bulb headlamps with plastic lenses. These lenses appear sufficiently strong that the test is no longer needed. The rule also updates the SAE J575 test procedure for headlamps referenced by Standard No. 108 by replacing the June 1980 version with that of December 1988. These amendments are based on a proposed rule published in May 1989.

That proposal dealt largely with an alternative to present headlamp systems, termed "roadway illumination systems", under which requirements would have been established for the lower beam, based upon computer models of the needs of different driving environments. However, in the wake of comments to the proposal, and the need for further research, NHTSA has decided not to go forward with this proposal at the present time.

The May 1989 notice also proposed the establishment of a docket to receive dimensional information of replaceable light sources in lieu of petitioning the agency for direct incorporation of new light sources into Standard No. 108. The agency plans to go forward with a supplemental proposal on this topic in the near future.

EFFECTIVE DATE: The effective date of the rule is September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Reed, Office of Rulemaking, NHTSA (202-366-6345).

SUPPLEMENTARY INFORMATION: NHTSA published a proposed rule on May 9, 1989 (54 FR 20084) presenting the agency's recommendation for long term simplification of Federal headlighting requirements. This took the form of a vehicle-based roadway illumination performance standard. NHTSA proposed an optional set of requirements under which manufacturers might use any type of headlighting system or light source they developed without the need to petition the agency for changes. Illumination would be provided by "roadway illumination devices" or "RIDs". A roadway illumination system composed of such devices was termed a "RIS." The agency received a large number of comments on this proposal from the motor vehicle and lighting industry, State officials, and individual citizens. In general, the commenters were not in favor of the proposal as written. Consequently, NHTSA has decided not to go forward with further rulemaking in this area at this time. The agency is conducting further research to develop the proposal and to better respond to commenters concerns.

In the same notice, NHTSA also proposed that information regarding the dimensional specifications of the devices (and all new replaceable bulbs for more conventional headlamps) would be filed in an agency docket to ensure interchangeability. The intent was to remove from the rulemaking process, the need to petition for the use of new headlamp light sources. Thus, to ensure that replaceable light sources manufactured for replacement are interchangeable with those used as original equipment, and that photometric performance equivalent to the original headlamp is provided, NHTSA proposed a new part 564, Replaceable Bulb Dimensional Information. Although generally in favor of this proposal, commenters have some concerns, as does NHTSA about its specifics. Consequently, the agency has decided to issue a Supplemental Notice of Proposed Rulemaking in the near future on this issue. The comments received will be addressed in that notice.

In the notice of May 9, 1989, the agency proposed deletion of the impact test for headlamps, and an update of SAE J575 as it pertained to headlamp testing. This final rule implements these two proposals.

The Impact Test and SAE Lighting Test Update

In its NPRM on short-term headlighting simplification published on December 29, 1987 (52 FR 49038), the

agency asked for comments on the impact test for replaceable bulb headlamps with plastic lenses, without proposing its deletion. However, the comments received suggested deletion on the basis that plastics used for headlamp lenses were sufficiently impact-resistant. Accordingly, in May 1989, the impact test was not included in the series of proposed requirements and test procedures since it appeared to have been of little value during its existence in Standard No. 108. Since commenters supported the proposal, Standard No. 108 is being amended to delete it.

Finally, with respect to test procedures, NHTSA proposed that, unless otherwise specified (such as for the vibration test), the version of SAE J575 applicable to headlamp testing be changed from that of June 1980 to that of July 1983, observing that the more recent version provides a more comprehensive and up-to-date test procedure. Commenters supported this proposal. Since that time, however, the SAE has issued a further update, that of December 1988. Inasmuch as there is no substantive change between this version and the one proposed (the later version corrects typographical errors in the earlier one), the agency is adopting the December 1988 version of SAE J575.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this rule and determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor significant under Department of Transportation regulatory policies and procedures. For manufacturers of replaceable bulb headlamps with plastic lenses, elimination of the impact test could result in a small cost saving.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. A rule based on the proposal will not have a significant effect upon the environment; it is not anticipated that the types and quantities of materials used in the construction of headlamps will change.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act.

Further, small organizations and governmental jurisdictions will not be significantly affected as it is not anticipated that the price of new vehicles and headlamps will be impacted.

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. In the last sentence of paragraph S6.1, with reference to SAE J575 the words "JUN80" are changed to "DEC88."

3. In Paragraphs S7.3.2(c), S7.3.7(h)(2)(i), and S7.3.8(d), the reference to paragraph "S8.9" is changed to "S8.8."

4. The following revisions are made in Paragraph S7.4(h):

(a) The first sentence is revised to read "A headlamp with a glass lens need not meet the abrasion resistance test (S8.2) or the chemical resistance test (S8.3)."

(b) In subparagraph (h)(i), the numeral "(8)" is changed to "(7)".

(c) Subparagraph (h)(i)(7) is removed.

(d) Subparagraph (h)(i)(8) is renumbered "(h)(i)(7)" and its reference to "S8.9" changed to "S8.8."

5. In Paragraph S7.4(h) and S7.5(i), the reference to "S8.10" is changed to "S8.9."

6. Paragraph S8.8 is removed, and paragraphs S8.9 and S8.10 are renumbered S8.8 and S8.9 respectively.

Issued on: March 20, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-7023 Filed 3-25-91; 8:45 am]

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49 CFR Part 571

[Docket No. 1-21; Notice 10]

RIN 2127-AE00

Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114. *Theft Protection,* to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In response to petitions for reconsideration, this notice amends these requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented.

DATES:

Effective Date: These rules are effective September 1, 1992.

Compliance Date: The changes made by this rule apply to vehicles manufactured on or after September 1, 1992.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 25, 1991.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours: 9:30 a.m. to 4 p.m.). It is requested that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM-11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5307).

SUPPLEMENTARY INFORMATION: On April 5, 1988, NHTSA published a notice of proposed rulemaking (NPRM) intended to address the problems of steering lock-up and transmission lever shifting (53 FR 11105). For automatic transmission vehicles, the notice proposed to require an ignition-key locking system that

would prevent the shifting of the transmission whenever the key was removed and prevent the removal of the key except when the transmission was locked in "park." It also proposed to require that automatic transmission vehicles with a steering column lock have a system that would permit engagement of that lock only when the transmission was in "park" and the ignition key had deactivated the vehicle's engine. For manual transmission vehicles with a steering column lock, the notice proposed to require that that lock would be engageable only when the ignition key had deactivated the vehicle's engine and the operator had performed an additional manual action involving a device other than the ignition key.

Forty comments were submitted to Docket 01–21–Notice 7 by motor vehicle manufacturers, insurance companies, police organizations, trade associations, and the public. In response to requests, the agency also met with several manufacturers which demonstrated potential system designs

On May 30, 1990, NHTSA published a final rule addressing the issues raised in the NPRM. (55 FR 21866). The agency decided to amend section S4.2(b) to prevent vehicle rollaway caused by shifting the transmission lever in automatic transmission vehicles. As amended, section S4.2(b) requires automatic transmission vehicles with a "park" position to have a key-locking system that prevents the removal of the key unless the transmission is locked in "park" or becomes locked in "park" as the direct result of removing the key. The agency did not adopt its proposal regarding steering lockup on automatic transmission vehicles, explaining that the purpose of that proposal would be essentially met as a result of the amendment it adopted regarding the removal of the key. Further, the agency decided not to adopt additional requirements in relation to steering lock-up on manual transmission vehicles.

NHTSA received petitions for reconsideration of this rule from Nissan, Rover Group, and Mr. Wilson Sherman of the Automobile Safety Foundation (ASF). In addition, several manufacturers including Mazda, Toyota, Subaru, Jaguar, and Honda expressed interest in the final rule but either did not request reconsideration or did not do so in a timely fashion in accordance with 49 CFR 553.35. Jaguar and Toyota submitted documents which they apparently viewed as petitions for reconsideration. However, because they were submitted after § 553.35's filing deadline, they cannot be treated as petitions for reconsideration. Instead, the agency has treated these submissions as petitions for rulemaking. This notice responds to the petitions for reconsideration.

In responding to the petitions for reconsideration, the agency has been able to respond to the significant issues raised in the rulemaking petitions submitted by the other manufacturers because the late petitions addressed identical concerns about transmission shift lock overrides, emergency key release systems, and the application of S4.3 to park lock systems.

For the convenience of the reader, this notice follows the May 30 final rule's organization and format. When a section heading used in the final rule does not appear in this preamble, it means that no petitions for reconsideration requested changes to the rule's provisions discussed in that section.

Safety Need About Steering Lock-up

In its petition for reconsideration, the ASF stated that "inadvertent lock-up poses a *nationwide emergency*, and therefore a comprehensive warning must be issued." (emphasis in original). The agency notes that Mr. Sherman and the ASF submitted numerous comments to Docket 1–21–No. 7, which the agency considered in developing the final rule. In its petition for reconsideration, the ASF similarly states that steering lock-up is a widespread safety problem, but presents no supporting data.

The agency concluded in its final rule that there is no safety need to justify adopting additional requirements to protect against steering lock-up on moving vehicles after removal of the ignition key. The agency's Final Regulatory Evaluation (FRE) identified only three crashes with three injuries and two fatalities that apparently resulted from steering lock-up over the course of approximately ten years. Based on the extremely low number of injuries and fatalities, NHTSA decided not to require additional measures designed to prevent the possibility of steering lock-up for moving vehicles. Even though the agency decided not to adopt new requirements expressly designed to prevent steering lock-up on moving vehicles, the final rule explained that the amendment to prevent transmission lever shifting accidents in automatic transmission vehicles will also prevent key removal while that type of vehicle is in motion. The amendment permits key removal only when the transmission is in "park."

Based on its analysis in developing the final rule, the agency concludes that there are insufficient documented instances of steering lock-up to warrant adopting additional requirements. As explained above, this decision is further supported by the fact that the final rule's amendments to prevent rollaway of automatic transmission vehicles also serve to prevent key-removal in those vehicles while they are moving.

As for ASF's request that the agency warn motor vehicle owners about steering lock-up, the agency has requested that the American Association of Motor Vehicle Administrators (AAMVA) distribute the final rule and a warning from the California driver's handbook about steering lock-up to the appropriate State officials to assist them in deciding if such a warning is necessary in their State. NHTSA has determined that for vehicles in use, it is more appropriate for the States to address this matter than NHTSA, which is authorized to issue safety standards for new vehicles. In a letter to NHTSA dated June 22, 1990, AAMVA indicated that it had complied with the agency's request.

Purpose of the Amendment

The NPRM proposed modifying Standard No. 114's purpose and scope section (S1) to reflect the purpose of the amendments in the proposal. Thus, that section would have indicated that along with theft protection, the standard addressed vehicle rollaway. In response to comments critical of this proposal, the agency decided in the May 30 final rule not to add reference to the rulemaking's rollaway prevention aspects in the regulatory text. The preamble explained that the agency wanted to avoid creating the impression that the standard's focus was shifting away from theft protection. The preamble further noted that even though "NHTSA's goal in amending the standard is to provide adequate protection against injuries caused by shifting the automatic transmission lever, Standard 114 remains primarily a theft protection standard."

In its petition for reconsideration, Rover Group stated that the amendment in S4.2(b) to prevent vehicle rollaway did not contribute to meeting the safety needs and theft protection purpose of Standard No 114, as explained in S1, and was, therefore, "unnecessary."

Instead of rescinding the amendment to S4.2(b) concerning rollaway, the agency has decided to increase manufacturer flexibility in complying with the rollaway provisions, as discussed later in this notice, and to make a conforming amendment to S1 so that it reflects the rollaway prevention aspects of the standard. Accordingly,

section S1 is amended to indicate that while the primary purpose of the standard is to protect against theft, the standard also seeks to reduce the incidence of crashes resulting from rollaway of parked vehicles.

Emergency Overrides and Key Release Systems

In the NPRM, the agency proposed to require that automatic transmission vehicles have an ignition-key locking system that would prevent the shifting of the transmission whenever the key was removed and would prevent the removal of the key except when the transmission was locked in "park." In addition, the notice proposed to require that if an automatic transmission vehicle had a steering column lock, that lock would be engageable only when the transmission was in "park" and the ignition key had deactivated the vehicle's engine. The NPRM also posed questions about alternative approaches and devices that might be able to reduce the problems of steering lock up and gear shifting.

Several manufacturers, including Honda, Nissan, Subaru, Mazda, and Toyota, commented that their electrical transmission shift lock systems might have problems complying with the proposal to require a transmission shift lock on vehicles with automatic transmissions. These systems appeared to comply with the proposal during normal operation. However, certain systems might not comply if the battery or electrical system failed and the vehicle was equipped with an override device to allow it to be moved by shifting the lever out of "park." Honda, Nissan, and Toyota requested that the proposal be modified to allow for an emergency device to override the transmission lock so that a disabled vehicle could be moved. In addition, Nissan, Toyota, and Subaru requested that the proposal be further modified to permit key removal, even if the transmission was not in "park."

After analyzing its proposal in response to these comments, the agency adopted a requirement in S4.2(b) which did not include exceptions for emergency overrides. That amendment specifies that each automatic transmission vehicle with a "park" position must have a key-locking system that prevents removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

1. Transmission Shift Override

In the final rule, NHTSA concluded that to enable a vehicle to be moved in case of electrical failure, an override to the transmission shift lock could be installed consistent with the NPRM and the final rule, provided the override could only be activated by the key used to control the vehicle. The preamble to the final rule explained that a manufacturer could install a manual override system that is tied to either the ignition part of the key-locking system or an auxiliary part of the key-locking system located near or as part of the manual override device. The agency explained that an override that could be operated without requiring a key might be detrimental to theft protection since an unauthorized person could operate that type of manual override While the final rule acknowledged that this requirement would result in overrides differing from those initially anticipated by some manufacturers, the agency did not anticipate that compliance would be overly burdensome for the manufacturers.

In its petition, Rover Group asserted that the NPRM did not give the public adequate notice or opportunity to comment about permitting key-based overrides. After reviewing the NPRM and comments to it, the agency has concluded that permitting a key based override was a logical outgrowth of its proposal and the public comments. Therefore, the agency believes that adequate notice was provided for the amendments to the final rule. In the NPRM, the agency asked a series of questions about types of key-locking and transmission shift locking systems currently in use and whether these systems would comply with the proposal. Although the proposal did not explicitly mention override devices, it put them at issue since it would have had the effect of prohibiting them. In response, several manufacturers, including Rover Group, commented about their systems. Several manufacturers noted that their systems had override devices and requested that the agency permit those devices. Accordingly, the agency believes that adequate notice was provided.

In their petitions for reconsideration, Nissan and Rover Group requested that Standard No. 114 be amended to permit overrides to the transmission shift lock other than ones tied to the vehicle's key. Nissan explained that it has designed a shift lock emergency override system that is operable by depressing an exposed button on the shift lever console, independent of the key. In other contacts with the agency, Toyota, Mazda, Subaru, Honda, and Jaguar explained the workings of their key-less transmission lock overrides. These overrides typically are activated by pushing an exposed device located on the transmission shift console. As an alternative, Nissan and Honda suggested that the agency permit unexposed overrides that are operable only after using a tool to remove a surface covering the device.

In their petitions, Nissan and Rover Group stated that they did not believe that permitting a key-less override would be detrimental to theft protection if a vehicle were equipped with a steering lock. Other manufacturers, including Toyota and Jaguar voiced similar views. This situation led Nissan and Jaguar to suggest the standard's theft protection aspects could be ensured by permitting vehicles to have non-key override systems if they also have a steering column lock.

Upon reconsideration, NHTSA first wishes to clarify its rationale for not permitting exposed override devices, as described in the docket comments. As explained in the final rule, the principal purpose for the requirements in Standard No. 114 is to protect against theft and thereby reduce the incidence of injuries resulting from unauthorized use by, among other things, having the key-locking system prevent steering or forward self-mobility, or both. Thus, any vehicle design must prohibit the vehicle's operation by an unauthorized user, i.e., anyone who does not have the vehicle's key. In describing vehicles that are equipped with steering locks, several manufacturers have correctly pointed out that, by preventing steering, such designs comply with the theft protection aspects of S4.2(b). Nevertheless, the agency notes that even though vehicles with steering locks protect against theft, they do not protect against the safety risk posed by vehicle rollaway, which was discussed at length in the NPRM and the final rule. These notices indicated that children playing in unattended vehicles have been injured when the vehicle rolls down an incline after they shift the transmission lever out of "park."

After reviewing various designs, the agency continues to believe that to prevent vehicle rollaway, young children should not be able to move the transmission shift lever. If a vehicle is equipped with a transmission shift override, it should be designed to ensure that young children cannot see or easily gain access to the override.

One way to prevent access by children and thus vehicle rollaway is to permit an override that is operable only by the vehicle's key because this typically ensures that the override is being activated by an authorized user. The preamble to the final rule explained

that such a key-activated override was permissible. Based on the apparent confusion caused by not expressly stating this in the regulatory text, upon reconsideration, the agency has modified Standard No. 114 so that section S4.2.2(b) now states that the means for activating the override device may be operable by the key, as defined in S3 of the standard.

A second way to prevent access by children and thus vehicle rollaway is to permit key-less overrides that are not visible and are "child-proof." After reviewing suggested designs, the agency has determined that a key-less override could prevent activation by a child if it is covered by a surface that, when installed, prevents activation of the device and which is removable only by use of a tool such as a screwdriver. An emergency override that is visible and accessible to chidren such as an uncovered one located on the transmission console would not be child-proof and thus would not comply with section S4.2.2(b). To ensure further that young children cannot easily gain access to the override, a surface that could be removed with a person's hands alone would not be permissible. While the agency understands that prohibiting certain override designs such as exposed ones may require some manufacturers to modify their override designs, the agency has determined that such requirements are necessary to ensure that children cannot easily override the transmission shift lock and thus shift the transmission lever.

The agency has determined that these amendments to the final rule will protect against theft and vehicle rollaway while providing manufacturers with greater design flexibility. The agency emphasizes that the amendment permits a key-less emergency override only if theft protection is ensured by a steering lock

Emergency Key Release

As for the second type of exception to the requirements, Toyota, Nissan, and Subaru requested in their comments on the proposal that the proposed requirements be amended to permit key removal in any transmission position because their systems permit key removal in case of battery or electrical system failure. In the final rule, NHTSA decided not to adopt this approach, explaining that such emergency situations typically occur when the vehicle is in "park" and the lights are left on for long periods of time. The final rule further explained that even in the unusual situation of electrical failure when the vehicle's transmission is not in "park," a transmission with an electrical shift lock system could be mechanically shifted to "park" so that the key could be removed. Therefore, the agency did not anticipate a need to remove a key while the transmission is in a position other than "park."

In their petitions for reconsideration, Nissan and Rover Group asked that Standard No. 114 be amended to permit the operator to remove the key if the transmission is in a position other than "park." While Nissan conceded that electrical failure in this situation rarely occurs, it still believed that it happens often enough to necessitate permitting an emergency key release so that the key is not left in an unattended vehicle while the driver seeks help. Nissan explained that its key-locking system includes a mechanical emergency key release to permit key removal because its electrical key-locking system includes a solenoid that prevents key removal upon electrical failure. Nissan demonstrated that to gain access to the emergency key release, the driver must use a screwdriver to remove a surface covering the release This led Nissan to state that the key release could not be activated unintentionally or be inadvertently removed while the vehicle was in motion. Range Rover believed that an expensive mechanical link between the transmission lever and the key-locking system would be necessary to comply with the final rule. Toyota demonstrated a key-locking system similar to Nissan's except that when electrical power fails, Toyota's solenoid acts differently than Nissan's, i.e., Toyota's solenoid releases the key instead of holding it in the key cylinder. Thus, with Toyota's key-locking system, upon electrical failure, the key could be removed in any transmission lever position.

Upon reconsideration, NHTSA has decided to permit a device which permits key removal while the transmission is in any position, provided that the following conditions are met. First, steering must be prevented upon key removal to ensure that Standard No. 114's theft protection aspects are not jeopardized. Second, the emergency device permitting key removal while the transmission is in a position other than "park" should not be accessible during normal operation or else rollaway might occur. Third, to limit access to the emergency key release, it must be covered by a surface that prevents access to it except by use of a tool, such as a screwdriver. The agency has determined that limiting the access to the emergency key release is necessary to make it likely that key removal occurs only during unusual situations such as electrical failure. In addition, while NHTSA still believes that it is rare to have power failure when the transmission is in a position other than "park," it will still be beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. The agency therefore has determined that providing manufacturers this additional design flexibility for their newly developed electrical transmission systems is warranted and will not harm Standard No. 114's safety or theft protection concerns.

As for Rover Group's concern that the final rule was a design-based requirement that would require use of an expensive and impracticable mechanical linkage, the agency disagrees. The variety of existing systems and prototypes demonstrated by several other manufacturers provide a measure of the performance-orientedness of the requirement. Further, while some manufacturers may have to modify their system designs, the agency believes that compliance with Standard No. 114, as amended, will not be overly burdensome.

Application of S4.3 to Park Lock Systems

In the final rule, the agency modified the provision in S4.3 to state that "The prime means for deactivating the vehicle's engine or motor shall not activate the key-locking system described in S4.2(b)." The principal purpose of this provision has been to prohibit locking the steering column while the vehicle is in motion. In its comments to the proposal, Nissan requested that for automatic transmission vehicles, a gear shift lock activated while the transmission is already in "park" should be exempted. The final rule inadvertently did not address this comment.

In its petition for reconsideration, Nissan explained that its park lock system did not appear to comply with S4.3, as adopted, since when the vehicle is not in motion, the shift lever locks in "park" at the moment the ignition key is turned to the "OFF" position. In both its docket comment and its petition for reconsideration, Nissan requested that S4.3 be amended by applying the provision only "while the vehicle is in motion."

Toyota voiced similar concerns about potential compliance problems of its shift lock system with S4.3. It explained that for some of its vehicles, if the transmission shift lever has already been placed in "park" before the engine

is shut off, turning off the ignition does activate the shift lock. Since Toyota believed that locking the transmission only poses a potential safety concern while the vehicle is in motion, it suggested that S4.3 be amended to include the phrase "unless an automatic transmission shift lever is in "park."

Upon reconsideration, NHTSA has decided that the provision in the final rule was overly broad because there are no safety benefits obtained by applying S4.3 to stationary vehicles. Further, prohibiting transmission lock systems in which the lock is activated while the transmission is in park might pose potentially burdensome compliance problems on some manufacturers. Accordingly, the agency has decided to modify Standard No. 114 so that S4.3 does not apply when automatic transmission vehicles are in "park."

Leadtime

The final rule provided over two years of leadtime to comply with the amendments. In its petition for reconsideration, Nissan asked for another year of leadtime before the amendments became effective, claiming that it would have to redesign substantially its systems if the agency rejected its requested amendments. After reviewing this issue in light of this notice's amendments giving manufacturers greater design flexibility, NHTSA concludes that the existing two-year leadtime is appropriate. The agency believes that manufacturers will not have to undertake extensive revisions to their systems to comply with Standard No. 114. For the most part, the agency anticipates that, at most, manufacturers of electrical transmission shift systems will typically only have to modify the electrical solenoid s circuitry or redesign the transmission console and area near the ignition key to include a plastic cover over the emergency devices. The agency thus does not anticipate the need for any extensive retoolings or redesigns. Accordingly, the agency has determined that the effective date of September 1, 1992 continues to be appropriate for this rulemaking.

Costs

In its petition for reconsideration, Rover Group stated that NHTSA did not consider the cost impact of the rulemaking, especially in terms of requiring a mechanical linkage system to vehicles with a console mounted key-locking system. The agency disagrees that the agency failed to consider the rulemaking's cost impact given the Final Regulatory Evaluation's detailed analysis of the rulemaking's cost implications. The agency further notes that Rover Group was under the apparent misconception that the amendments would necessitate a mechanical linkage. As evidenced by systems developed by other manufacturers, there are other, less costly ways to comply with Standard No. 114, as amended.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this notice responding to the petitions for reconsideration to the amendments to Standard No. 114 and determined that it is not "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. For the final rule, the agency prepared a Final Regulatory Evaluation (FRE) which provides the details of the cost and benefit estimates, and a copy of the FRE was placed in the docket. Those estimates are essentially unchanged by these amendments. As explained in the final rule, the agency anticipated the costs of this rulemaking to be between $3.2 million and $6.6 million. The amendments adopted in this notice should not increase these costs and may result in minor cost savings because potential compliance problems should be reduced. As explained in this notice's section on safety needs, the agency has estimated that there are roughly 400 to 800 relevant injury producing transmission lever shifting accidents each year nationwide. Installation of the required technology in the cars and light trucks not voluntarily equipped by the rule's effective date will prevent an estimated 50 to 100 child-injuring rollaway accidents annually.

Regulatory Flexibility Act

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Few, if any, vehicle manufacturers are small entities. Small organizations and small governmental entities will not be significantly affected by this rule. Although such groups purchase vehicles, the potential price increases resulting from this rule will be minimal.

Executive Order 12612 (Federalism)

NHTSA has considered the federalism implications of this final rule, as required by Executive Order 12612. NHTSA is unaware of any existing State requirements that will be preempted by this rule. After considering this rule in accordance with the principles and criteria contained in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency also has analyzed this rule for the purposes of the National Environmental Policy Act and determined that the rule will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.114, S1, S4.2, and S4.3 are revised and S4.2.1 and S4.2.2 are added to read as follows:

§ 571.114 Standard No. 114; theft protection.

S1 *Purpose and Scope.* This standard specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of a motor vehicle. It also specifies requirements to reduce the incidence of crashes resulting from rollaway of parked vehicles.

* * * * *

S4.2 Each vehicle shall have a key-locking system which, whenever the key is removed, prevents:

(a) The normal activation of the vehicle's engine or motor; and

(b) Either steering or forward self-mobility of the vehicle or both.

S4.2.1 Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a "park" position shall prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

S4.2.2(a) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits key removal provided that steering is prevented upon the key's removal. The means for activating the device shall be covered by a non-transparent surface

which, when installed, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other tool.

(b) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from "park" after the removal of the key provided that steering is prevented when the key is removed. The means for activating the device may be operable by the key, as defined in S3. The device may be operable by another means which is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other similar tool.

* * * * *

S4.3 Except when an automatic transmission vehicle is in "park," the means for deactivating the vehicle's engine or motor shall not activate any device installed pursuant to S4.2(b) to prevent the vehicle's steering or forward self-mobility or both.

* * * * *

Issued on March 20, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-7021 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-16; Notice 4]

RIN 2127-AC75

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Standard No. 102 currently requires permanent display of gear position information for automatic transmission vehicles without a gear shift lever park position. This final rule replaces that requirement with one that requires display of gear position information only when the ignition is in a position in which the engine is capable of operation. The purpose of this amendment, which affects medium and heavy duty vehicles, is to facilitate the use of electronic technology. This final rule also amends the standard to require, for all automatic transmission vehicles, that full gear position information, i.e., identification of shift lever positions, including the position of the gears in relation to each other and the gear position selected, be provided in a single location.

DATES: *Effective dates:* The amendment to Standard No. 102's requirement for permanent display of gear position information for automatic transmission vehicles without a gear shift lever park position (S3.1.4.2) is effective April 25, 1991. The amendment adding S3.1.4.4 to require, for all automatic transmission vehicles, that full gear position information be displayed in a single location is effective September 23, 1991.

Petitions for reconsideration: Petitions for reconsideration must be received by April 25, 1991.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5276).

SUPPLEMENTARY INFORMATION: One of the stated purposes of Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, is to reduce the likelihood of shifting errors. For many years, section S3.2 of the standard required identification of shift lever positions of all automatic transmission vehicles to be permanently displayed in view of the driver.

On July 11, 1989, NHTSA published in the **Federal Register** (53 FR 32409) a final rule amending Standard No. 102 for vehicles which have a shift lever position which puts the transmission in park. For those vehicles, the requirement for "permanent display" was replaced with a requirement that identification of automatic transmission shift lever positions be displayed in view of the driver whenever either of the following conditions exist: (a) The ignition is in a position in which the transmission can be shifted, or (b) the transmission is not in park. The purpose of the amendment was to facilitate the use of electronic displays, while ensuring that the information in question is displayed at all times when it may be needed for safety. In order to take advantage of the increased flexibility offered by the amendment, it is generally necessary for a vehicle to have both a park position and a transmission shift interlock system, i.e., a system which requires the shift lever to be in park before the ignition key can be removed and which prevents the shift lever from being moved from park after the key is removed.

NHTSA recognized a concern expressed by several commenters, including General Motors (GM), Ford, Navistar International, and the Motor Vehicle Manufacturers Association, that the proposed requirements would not facilitate the use of electronic technology in medium and heavy duty trucks, since those vehicles do not have a shift lever park position. The agency noted that the requirements recommended by those commenters were significantly different than those proposed in the NPRM and indicated that it would address that issue, as well as other issues related to Standard No. 102's display requirements, in a separate rulemaking.

On January 12, 1990, NHTSA published in the **Federal Register** (55 FR 1226) an NPRM addressing those issues.

First, for automatic transmission vehicles without a park position, the agency proposed to replace the permanent display requirement with one that would require display of gear position information only when the key is not in the "off" or "accessory" position. Under the proposal, such display would also not be required when the ignition switch is in a position that is used only to start the vehicle. NHTSA tentatively concluded that the proposed amendment would maintain the safety aspects of the existing requirement while facilitating the use of electronic technology.

Second, for all automatic transmission vehicles, the agency proposed to require that full gear position information, i.e., identification of shift lever positions, including the position of the gears in relation to each other and the gear position selected, be provided in a single location. NHTSA tentatively concluded that the standard's purpose of reducing the likelihood of shifting errors is best met if all of the required information is available in one location.

Third, the agency responded to a suggestion by Volkswagen that the agency amend Standard No. 102 to provide greater flexibility for manual transmission pattern displays. That standard requires identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, to be permanently displayed in view of the driver. Volkswagen recommended that electronic display technology be permitted as a sole indication of the manual transmission shift pattern. NHTSA indicated that it did not believe

that the suggested amendment would be appropriate, given the safety purpose served by the requirement and the lack of need to change the requirement in order to facilitate the use of electronic displays.

NHTSA received five comments on the January 1990 NPRM. Four of the commenters addressed the agency's proposal to amend Standard No. 102's requirement for permanent display of gear position information for vehicles with automatic transmissions not having gear shift lever park positions. GM, Ford and Chrysler supported the proposed amendment. Those commenters agreed that the proposed amendment would preserve the safety intent of the current requirement while improving design flexibility. A private individual, Mr. Robert Schlegel, commented that, in addition to not requiring display of gear position information in the "off" and "accessory" positions, the amendment should also not require display of that information in the "lock" position. That commenter stated that, for some designs, the "lock" position may be different from the "off" position.

With respect to Mr. Schlegel's comment, NHTSA notes that the ignition designs of medium and heavy duty trucks, the vehicles affected by the proposal, typically include only three positions: "off," "on," and "accessory." In the event that a manufacturer provided a "lock" position for these vehicles, however, as is often done for light vehicles, the agency agrees that display of gear position information should not be required for the "lock" position. The "lock" position is, in essence, a second "off" position. Moreover, it is the ignition switch position which is intended to be used when a vehicle is not being driven, and the vehicle's battery would be drained if electronic display of gear position information were provided in the "lock" position.

NHTSA has decided to issue an amendment along the lines of the proposal, while taking account of the possible design cited by Mr. Schlegel. Under the amendment being adopted, full gear position information must be displayed in all ignition switch positions in which the engine is capable of operation, with the exception of an ignition switch position that is used only to start the vehicle.

Three commenters addressed the agency's proposal to require, for all automatic transmission vehicles, that full gear position information be provided in a single location. GM and Ford supported the proposal. GM noted that it has made this a common practice and believes this helps the driver obtain gear position information in a timely manner.

Chrysler disagreed with the proposal to require full gear position information to be provided in one location. That company stated that the automotive industry is continuously seeking new ways to provide product innovation and distinction to gain a competitive edge in the market place, and it sees no reason to limit innovation in the area of gear position displays so long as the standard's purpose of reducing shifting errors is not jeopardized. Chrysler stated that it took exception with the agency's position that the need to check more than one location for full gear position information would unnecessarily increase the potential for driver hesitation and confusion and lead to greater likelihood of shifting errors. It noted that the process of shifting gears while driving necessitates some diversion of the driver's attention, particularly if the full gear information is located on a floor console. Chrysler argued that it would be less distracting to casually glance at the instrument cluster area for current gear position than down at a floor console. That company also argued that the need to direct full attention to the task of selecting a gear position is usually done before the vehicle is set in motion.

After considering the comments, NHTSA has decided to adopt the proposed amendment to require full gear position information, i.e., identification of shift lever positions, including the position of the gears in relation to each other and the gear position selected, to be provided in a single location. The agency continues to believe that the standard's purpose of reducing the likelihood of shifting errors is best met if all of the required information is available in one location. If the selected gear position is provided in one location, e.g., "DRIVE," and the positions of the gears in relation to each other, e.g., "P R N D L" or P R N D 1 2" are provided in a different location, a driver may find it necessry to look back and forth between the two locations in changing gear positions. The agency believes that this would increase the potential for driver hesitation and confusion and lead to greater likelihood of shifting errors.

NHTSA disagrees with Chrysler's suggestion that this requirement will inappropriately limit innovation in the area of gear position displays. For the reasons discussed above, the agency believes that the requirement meets a safety need. Moreover, the requirement is not design restrictive. If Chrysler wishes to provide a display of current gear position information on the instrument panel, it is free to do so. Under the amendment, it can either provide full gear position information at that location, e.g., include a "P R N D L" label adjacent to the display of current gear position, or it can provide a display of current gear position information only on the instrument panel and include a display of full gear position information elsewhere, e.g., on the floor console.

One commenter, Chrysler, addressed the agency's response to a suggestion by Volkswagen that Standard No. 102 be amended to provide greater flexibility for manual transmission pattern displays. As indicated above, that standard requires permanent display of identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern. Volkswagen recommended that electronic display technology be permitted as a sole indication of the manual transmission shift pattern. NHTSA indicated that it did not believe that the suggested amendment would be appropriate, given the safety purpose served by the requirement and the lack of need to change the requirement in order to facilitate the use of electronic displays.

Chrysler argued that there is little difference between permitting electronic display of gear position information for automatic transmission vehicles without a "park" position and allowing electronic display as the sole indication of gear shift pattern for manual transmission vehicles. It also argued that it does not believe that it is essential that the driver memorize the manual transmission shift pattern prior to the time the vehicle is started.

While NHTSA has considered Chrysler's comment, it reaffirms its view that the suggested amendment would not be appropriate. First, while the language of this requirement may appear to be similar to a requirement for permanent display of automatic transmission gear position information, the substance is quite different. While it is necessary to use a position indicator to show the shift lever positions of an automatic transmission, a simple label may be used to show the shift pattern of a manual transmission. The use of electronic technology is not relevant to these provisions, since they require only a simple label rather than a position indicator. Moreover, manufacturers desiring to supplement the required label with an electronic display are free to do so. Even if a manufacturer provides an electronic display for manual transmissions, the need to also provide a simple label depicting manual

transmission shift pattern is not burdensome.

Second, such a label serves a safety purpose. In order to drive a manual transmission car, a driver should memorize the manual transmission pattern. If the manual transmission shift pattern is displayed prior to the time the vehicle is started, there is a greater opportunity for the driver to memorize the pattern. Chrysler argued that it is not essential that the driver memorize the manual transmission shift pattern prior to the time the vehicle is started, any more than the driver of an automatic transmission vehicle with electronic display of full gear information has to memorize the PRNDL information. The agency believes it is obvious, however, that there is a greater need for a driver to memorize a manual transmission shift pattern than an automatic transmission PRNDL pattern. Drivers must continuously shift manual transmission as part of ordinary driving, including times when the vehicle is in motion. By contrast, automatic transmissions are only occasionally shifted while the vehicle is in motion. NHTSA continues to believe that the requirement for permanent display of manual transmission shift pattern provides a greater opportunity for the driver to memorize the pattern.

One commenter, Stone Bennett Corporation, asked whether the proposed requirements for automatic transmission vehicles without a gear shift lever park position would be met by certain designs for shift control consoles. In addition to including a mechanism for shifting the transmission (push buttons or toggle levers), the consoles incorporate a display which indicates the particular gear position which has been selected, e.g., "R" for reverse. No other gear positions are shown. In at least some of the designs, the display is an electronic one. Stone Bennett asked about the "acceptability" of providing a label indicating the gear position sequence on the body of the shift control console, e.g., "1 2 D N R." Drawings provided by the commenter indicate that the label would be provided directly adjacent to the gear position display.

NHTSA notes that, as indicated above, the requirements adopted today can be met by an electronic display of current gear position with an adjacent label indicating the gear position sequence. The electronic display and adjacent label would, of course, have to be in the view of the driver, and the electronic display would have to be activated whenever the ignition is in a position in which the engine is capable of operation (with the exception of an ignition position that is used only to start the vehicle).

Since the amendment to Standard No. 102's requirement for permanent display of gear position information for automatic transmission vehicles without a gear shift lever park position imposes no new requirements but instead increases manufacturer flexibility by relieving a restriction, the agency finds good cause for adopting an effective date of 30 days after publication of the final rule.

As discussed in the NPRM, NHTSA believes that all automatic transmission vehicles currently meet the requirement that full gear position information be displayed in a single location. For this amendment, the agency is adopting an effective date of 180 days after publication of the final rule.

Regulatory Impacts

The agency has analyzed the economic and other effects of these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The amendment to Standard No. 102's requirement for permanent display of gear position information for automatic transmission vehicles without a gear shift lever park position imposes no new requirements but instead increases manufacturer flexibility by relieving a restriction. Any cost impacts would be in the nature of slight, nonquantifiable cost savings. The agency believes that the other amendment, to require, for all automatic transmission vehicles, that full gear position information be displayed in a single location, is currently met by all automatic transmission vehicles. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units are affected by the amendments only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendments will not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.102, S3.1.4.2 is revised and S3.1.4.4 is added to read as follows:

§ 571.102 Standard No. 102; Transmission shift lever sequence, starter interlock, and transmission braking effect.

* * * * *

S3.1.4.2 Except as specified in S3.1.4.3, if the transmission shift lever sequence does not include a park position, identification of shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever the ignition is in a position in which the engine is capable of operation.

* * * * *

S3.1.4.4 Effective September 23, 1991, all of the information required to be displayed by S3.1.4.1 or S3.1.4.2 shall be displayed in view of the driver in a single location. At the option of the manufacturer, redundant displays providing some or all of the information may be provided.

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Issued on March 20, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-7020 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 70]

RIN 2127—AD10

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends the requirements for automatic crash protection, which currently apply to front outboard seats in passenger cars, to front outboard seats in three additional types of light-duty vehicles. With automatic crash protection, occupants of those vehicle types will be protected by means that require no action by vehicle occupants. The effectiveness of automatic crash protection is dynamically tested, that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 miles per hour barrier crash test. The three newly covered vehicle types are trucks, multipurpose passenger vehicles (such as passenger vans and four-wheel drive utility vehicles), and buses, all with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles are collectively termed "light trucks" throughout the rest of this preamble.

The automatic crash protection requirements for light trucks will be implemented in a manner that closely parallels the manner in which the automatic crash protection requirements for cars were implemented. As was the case with passenger cars, the automatic crash protection requirements for light trucks will be phased-in over a period of several years.

DATES: *Effective date:* The changes made in this rule become effective September 23, 1991.

Compliance dates: See the Compliance Dates section at the beginning of **SUPPLEMENTARY INFORMATION.**

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than April 25, 1991.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket and notice number set forth at the beginning of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that ten copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Crashworthiness Division, NRM-12, Room 5320, NHTSA 400 Seventh Street SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-2264.

SUPPLEMENTARY INFORMATION:

Compliance Dates

Light trucks manufactured before September 1, 1994 will not be required to comply with the automatic crash protection requirements set forth in this rule. Each manufacturer and each importer will be required to install automatic protection in—

20 percent of its light trucks manufactured from September 1, 1994 to August 31, 1995, inclusive;

50 percent of its light trucks manufactured from September 1, 1995 to August 31, 1996, inclusive;

90 percent of its light trucks manufactured from September 1, 1996 to August 31, 1997, inclusive; and

100 percent of its light trucks manufactured on or after September 1, 1997.

Alternatively, a manufacturer may choose to comply with a schedule which postpones by one year the date on which its first light truck must have automatic protection, but accelerates by two years the date on which all of its trucks must be so equipped. Under this alternative schedule, a manufacturer will not be required to equip any light trucks manufactured on or before August 31, 1995 with automatic crash protection, but must equip all light trucks manufactured on or after September 1, 1995 with automatic crash protection.

Background

Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. As one means of achieving these goals, Standard No. 208 has long required the installation of safety belts in passenger cars. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. The effectiveness of automatic crash protection is dynamically tested, that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (which help to assure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). Automatic crash protection in cars will save thousands of lives and prevent tens of thousands of serious injuries each year when all cars are so equipped.

Although Standard No. 208 has long required the installation of safety belts at all designated seating positions in light trucks, it has not required those vehicles to provide automatic crash protection. NHTSA decided it was appropriate to consider whether light trucks should be required to offer automatic crash protection in front outboard seating positions, in addition to safety belts at all seating positions. This effort led NHTSA to propose to require automatic crash protection in light trucks in a notice of proposed rulemaking (NPRM) published on January 9, 1990 (55 FR 747).

That NPRM proposed to require automatic crash protection in trucks, multipurpose passenger vehicles (such as passenger vans and utility vehicles), and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and to measure the effectiveness of the automatic crash protection using the same crash test procedures specified for passenger cars. Additionally, the NPRM proposed to phase-in the automatic crash protection requirements, as was done for the passenger car automatic crash protection requirements. Finally, to encourage the production of light trucks with air bags, it proposed to allow a "one-truck credit" provision for vehicles with air bags at the driver's position, along the lines of the "one-car credit" provision for passenger cars.

NHTSA received 34 comments in response to this NPRM. Commenters included vehicle manufacturers, air bag suppliers, trade associations, representatives of the insurance industry, academia, other governmental agencies, and consumers. Several of the manufacturers commented that they would have difficulty complying with some or all of the elements of the proposed implementation schedule. To further explore these comments, NHTSA requested additional information from five vehicle manufacturers (Chrysler, Ford, General Motors, Mazda, and Toyota) on May 24, 1990.

NHTSA has considered and analyzed all of the comments and other information in developing this final rule. For the convenience of the reader, this

rule uses the same organization and format as the NPRM did.

Requirements of this Rule

1. Vehicles Covered by This Rule

The agency proposed to extend the requirements for automatic crash protection to trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. As noted in the NPRM, nearly all trucks and mulitpurpose passenger vehicles in this weight range will be required to comply with the injury criteria in a 30 mph barrier crash with manual lap/shoulder belts at the front outboard seats fastened around test dummies, or, at the manufacturer's option, with automatic crash protection for those seating positions, as of September 1, 1991. Given that implementation of this new crash testing requirement for light trucks would precede the implementation of the automatic restraint requirement for those vehicles, the agency stated in the NPRM that, "NHTSA believes that the need for structural changes to accommodate the installation of automatic crash protection in light trucks beginning in late 1993 would be minimal because of the changes already necessary to comply with the dynamic testing requirements in Standard No. 208 applicable to light trucks manufactured on or after September 1, 1991." 55 FR 749; January 9, 1990.

The commenters generally concurred with the proposal that trucks and multipurpose passenger vehicles be equipped with automatic crash protection. However, some commenters suggested that the installation of automatic crash protection would not be as simple as was implied in the NPRM, while others asked for addition leadtime to install automatic crash protection, and still others identified particular types of trucks and multipurpose passenger vehicles that could pose unique problems for automatic crash protection. This final rule requires trucks and multipurpose passenger vehicles to be equipped with automatic crash protection.

The NPRM also set forth a proposal to require automatic crash protection in front outboard seats of small buses, even though small buses will not be subject to the dynamic testing requirements that become effective September 1, 1991. The agency stated its belief that automatic crash protection in small buses would be practicable, especially because many van-type buses are based on a platform and drivetrain that are the same as or similar to the platform and drivetrain of van-type multipurpose passenger vehicles that will be subject to the dynamic testing requirements. Further, the NPRM set forth the agency's belief that the safety need for automatic crash protection for the driver and any other front outboard seat occupants in a small bus did not appear to be any different than it is for occupants of front outboard seats of multipurpose passenger vehicles and trucks of similar size and weight. The agency sought comments on these tentative conclusions. No commenters suggested that the agency was incorrect. Accordingly, this rule adopts the proposed requirement for small buses to be equipped with automatic crash protection, for the reasons set forth in the proposal.

The agency also sought comment on its proposal to include certain types of light trucks in the requirement for automatic crash protection, even though those vehicles were excluded from the dynamic testing requirements. These vehicles were:

a. Motor homes,
b. Convertibles,
c. Open-body type vehicles,
d. Walk-in van-type trucks,
e. Vehicles designed exclusively to be sold to the U.S. Postal Service, and
f. Vehicles with chassis-mounted campers.

These types of light trucks were excluded from the dynamic testing requirements because the vehicles are unique in design, often have unique restraint systems, and are intended to accommodate a narrowly defined end use. Additionally, the numbers of these vehicles produced annually are limited, so the overall impact of these vehicle types on light truck safety is proportionally small.

Notwithstanding this previous decision, NHTSA proposed to make these types of light trucks subject to automatic protection requirements. The NPRM noted that the agency is unaware of any data showing a differing safety need for front-seat occupants of these types of light trucks than for front-seat occupants of other light trucks of comparable size and weight. The agency expressly noted that designs for automatic crash protection may be more complex and the costs for automatic crash protection may well be higher in these particular types of light trucks than in other light trucks. However, NHTSA tentatively concluded that the increased complexity and higher costs were not sufficient to justify allowing these light trucks to provide a lesser level of occupant safety than other light trucks of comparable size and weight. The agency sought public comment on this tentative conclusion in the NPRM.

The agency received extensive comments. Ford commented that a requirement for automatic crash protection would pose particular technical difficulties for manufacturers of motor homes and walk-in vans. Chrysler commented that a requirement for automatic crash protection would pose particular technical difficulties for manufacturers of light truck convertibles and open-body type vehicles. In addition, Chrysler commented that NHTSA had not provided any substantive justification for concluding that automatic crash protection would be practicable for these types of light trucks. General Motors (GM) commented that walk-in van-type vehicles should be excluded from the automatic crash protection requirements because of a lesser safety need for occupant protection in those vehicles. GM commented that these vehicles are typically used to make deliveries in urban areas, and not generally used for highway driving or personal use. GM also commented that only about 30 percent of its walk-in vans are equipped with front passenger seats, and that, in the 1989 model year, GM sold only 137 walk-in vans within the proposed weight ranges. Finally, GM asserted that a considerable redesign of its walk-in vans would be needed to comply with a requirement for automatic crash protection, and that this redesign would not be practical for such a small number of vehicles. The Recreation Vehicle Industry Association (RVIA) commented that the final rule should either exclude motor homes from the automatic restraint requirements or limit the automatic restraint requirements to motor homes with a gross vehicle weight rating of 6,000 pounds or less. According to RVIA, motor homes "are not part of the 'safety problem' " and structural changes to motor homes would be needed to comply with the automatic restraint requirements. Winnebago Industries, a motor home manufacturer, commented that one of its models would have a difficult time complying with the automatic restraint requirements and asked that this model of motor home be excluded from the automatic crash protection requirements.

In response to these comments, NHTSA has carefully reexamined its proposal to include these light truck types in the automatic crash protection requirements. The agency believes it should apply the automatic crash protection requirements to all types of light trucks if it would be practicable to install automatic protection in these

vehicles and if the safety benefits of automatic protection would be reasonably related to the cost of such installations. NHTSA has applied this approach to whether the automatic crash protection requirements should be applied to each of the six light truck types that were excluded from the dynamic testing requirements.

With respect to convertibles and open-body type vehicles, the available evidence indicates that it is practicable to install automatic crash protection. Convertible passenger cars are required to include automatic crash protection. Manufacturers such as Chrysler are advertising the merits of air bag technology, especially in convertibles. The transfer of technology from convertible passenger cars to provide automatic crash protection in convertible and open-body light trucks will not require any technological "breakthroughs." Instead, such a transfer will require careful planning and engineering to install automatic crash protection in these types of light trucks.

NHTSA concurs with Chrysler's comment to the extent that it suggests that installing automatic crash protection in convertible and open-body light trucks will be more difficult than in convertible passenger cars, because these types of light trucks are generally designed for off-road or other utility use. This greater degree of difficulty is a good reason for allowing manufacturers some additional leadtime to incorporate automatic crash protection in these vehicles. This final rule does that by providing an additional year in the phase-in, as discussed later in this preamble.

However, NHTSA does not concur with Chrysler's comment to the extent that it suggests that this greater degree of difficulty is sufficient to justify excluding convertibles and open-body type light trucks from the automatic crash protection requirements. As explained above, NHTSA agrees that careful planning and engineering will be needed to modify the automatic crash protection systems used in convertible passenger cars for application to convertible and open-body light trucks. The agency believes that the requirement for automatic crash protection in convertible and open-body light trucks is "practicable" within the meaning of section 103(a) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(a)), because manufacturers can comply with the requirement by transferring the basic technology from similar vehicles (convertible passenger cars), and making modifications to account for the different characteristics of the light trucks.

The costs for providing automatic crash protection in these trucks are estimated to be roughly comparable to the costs for providing automatic crash protection in convertible passenger cars. Similarly, the safety benefits of automatic crash protection in these trucks should be comparable to the benefits of automatic crash protection in convertible passenger cars. In 1988 alone, 174 front seat occupants of open-body trucks were killed in vehicle crashes. NHTSA has previously concluded that the safety benefits from automatic crash protection in convertible passenger cars are more than adequate to justify the estimated costs associated with installing automatic crash protection in convertibles. *See* 52 FR 10122; March 30, 1987 and 53 FR 15067; April 27, 1988. The agency has no reason to alter that conclusion here.

Accordingly, NHTSA concludes that it is practicable to provide automatic crash protection in light trucks that are convertibles or open-body vehicles. Further, the agency believes that the safety benefits of automatic crash protection in these types of light trucks will be reasonably related to the costs of providing automatic crash protection in these trucks. Therefore, this rule does not exclude convertibles and open-body light trucks from the automatic crash protection requirements.

The next type of light truck examined by the agency was walk-in vans. These vehicles pose special technical difficulties for automatic crash protection, because of their unique design features, including nearly vertical steering columns, fold-away driver's seats, large open doorway areas, and the absence of B-pillars near the driver's seating position. Further, there are no passenger cars similar to walk-in vans, so it would not be possible to transfer, with some modifications, automatic crash protection technology from a similar type of passenger car. Thus, while it might be possible, it would present substantially greater technical and engineering challenges to install automatic crash protection in walk-in vans than would be presented to install automatic protection in the other types of light trucks that were excluded from the dynamic testing requirements for manual safety belts.

In addition, walk-in vans are designed primarily for deliveries in urban areas, where the driver will frequently enter and exit the vehicle to make the deliveries. Hence, these vehicles are less likely than others to be involved in high-speed crashes. Additionally, most walk-in vans are not within the proposed weight limits for light trucks to be equipped with automatic crash protection. In its comments, GM stated that it sold 137 walk-in vans within the proposed weight limits during 1988. NHTSA concludes that the costs that would be associated with designing a system of automatic crash protection for walk-in vans, which would be spread over the few walk-in vans that fell within these weight limits, would not be reasonably related to the safety benefits anticipated for such walk-in vans. After considering these factors, NHTSA has concluded that the requirement for automatic restraints in light trucks should not apply to walk-in vans.

The agency next examined vehicles designed exclusively to be sold to the U.S. Postal Service. The available evidence indicates that these light trucks would not present any serious problems for the installation of automatic crash protection. Hence, it would be practicable to require automatic crash protection in these light trucks. However, the safety benefits from requiring automatic crash protection in these vehicles would be marginal, because the U.S. Postal Service requires its employees to wear the safety belts in the Postal Service vehicles while on the job. This safety belt use policy should ensure that persons riding in these light trucks will have the safety protection of manual lap/shoulder belts every time they ride in these vehicles. Automatic crash protection would, therefore, offer marginal, if any, additional protection in these vehicles. Given the lesser safety benefits for automatic crash protection in light trucks designed exclusively for sale to the U.S. Postal Service, the agency has decided to exclude these light trucks from the automatic crash protection requirements.

Finally, the agency examined motor homes and vehicles carrying chassis-mount campers. The commenters that addressed the proposal to cover these vehicles did not suggest that there were any particular difficulties presented for installing automatic crash protection in motor homes and vehicles carrying chassic-mount campers. Instead, those commenters focused on the fact that these vehicles are typically manufactured in more than one stage and that the final-stage manufacturers are small businesses. No commenter identified some characteristic in the design of these vehicles that would make it harder to install automatic crash protection in them than in other types of

light trucks, nor is NHTSA aware of any such characteristic. Similarly, there are no indications of any lesser safety need for automatic crash protection in these vehicles. Motor homes and vehicles carrying chassi-mount campers are not designed primarily for use in urban areas, nor is there any reason to believe that safety belt use in these vehicles is substantially greater than in other types of light trucks. Further, the cost of installing automatic crash protection in these vehicles would not exceed the costs of installing automatic protection in other types of light trucks. After examining these factors, there is no apparent basis for excluding these vehicles from the automatic crash protection requirements. Therefore, this rule requires motor homes and vehicles carrying chassis-mount campers to comply with the automatic crash protection requirements.

To the extent that commenters were addressing the particular attributes of motor home manufacturers, instead of the particular attributes of vehicles that are motor homes, the agency believes it is appropriate under the National Traffic and Motor Vehicle Safety Act (the Safety Act) to have the standard apply to all motor homes and vehicles carrying chassis-mount campers. If any manufacturer of motor homes and/or vehicles carrying chassis-mount campers would experience a substantial economic hardship as a result of these requirements, that manufacturer may file a petition requesting a temporary exemption from the automatic crash protection requirements, pursuant to 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety Standards.* NHTSA can consider the special circumstances of vehicle manufacturers in the context of evaluating any such petitions, and take appropriate actions to afford any necessary special treatment for such manufacturers.

2. Crash Test Procedural and Performance Requirements

The NPRM proposed that compliance testing for light trucks equipped with automatic crash protection be conducted according to the same test procedures and using the same injury criteria that are currently specified for use in testing passenger cars equipped with automatic crash protection. Ford asked in its comments that calculation of the head injury criterion (HIC) be limited to a 15 millisecond maximum, instead of the currently-specified 36 millisecond maximum. Ford previously raised this identical comment for HIC calculations for passenger cars. NHTSA specifically rejected Ford's earlier comment in the preamble to the rule that established the 36 millisecond maximum for HIC calculations; *see* 51 FR 37028, at 37031; October 17, 1986. In its new comment, Ford did not provide any additional data or information, nor did Ford explain why it believes HIC should be calculated differently for passenger cars and light trucks. There is, therefore, no reasons for NHTSA to modify its previous rejection of Ford's 15 millisecond limit.

Ford also commented that a minor adjustment should be made to the test procedures in Standard No. 208 to make them consistent with the procedures in Standards No. 212, *Windshield Mounting,* and No. 219, *Windshield Zone Intrusion.* Ford correctly noted that Standards No. 212 and 219 include a provision in the test procedures for trucks, multipurpose passenger vehicles, and buses that "unloaded vehicle weight does not include the weight of work-performing accessories." The effect of this provision is that certain work-performing accessories mounted on the front of trucks, such as snow plows and winches, are not mounted on the vehicle for the crash test. Absent a similar provision in Standard No. 208, those portions of the work-performing accessories that are ordinarily removed from the vehicle when they are not in use (such as the snowplow blade) would not be mounted on the vehicle for the crash test, but any accessories that are mounted on the vehicle before delivery and are not ordinarily removed (such as the snowplow mounting hardware) would remain in place on the vehicle for the crash test.

Ford commented that these differing provisions in Standard No. 208 and Standards No. 212 and 219 would force manufacturers to conduct two different crash tests for the purposes of certifying compliance. If the test procedures for the standards were the same, the manufacturers would only have to conduct one crash test, just as a single test can be used to measure compliance with the three standards for passenger cars. The exclusion of work performing accessories from the calculation of unloaded vehicle weight in Standards No. 212 and 219 also places the certification burden on the original vehicle manufacturers, instead of the small manufacturers that attach work performing accessories to new vehicles, and keeps the certification burden manageable for the vehicle manufacturer, because not every different combination of vehicle and work performing accessory is subject to compliance testing. NHTSA is persuaded by this comment for the reasons offered by Ford. Therefore, this final rule amends S8.1.1(b) of Standard No. 208 to include the same provision in the test procedures for light trucks that has long been included in the test procedures for light trucks subject to Standards No. 212 and 219.

No other commenters addressed the proposal to apply the passenger car test procedures and injury criteria to light trucks with automatic crash protection. With the exception of the modification made in response to the Ford comment discussed above, the proposed procedures are adopted in this final rule.

The NPRM also proposed to establish the same due care defense for light trucks with automatic crash protection as is currently established for passenger cars. Both Ford and GM commented in support of this proposal. It is adopted in this final rule for the reasons stated in the proposal.

3. Phased-In Implementation of the Automatic Crash Protection Requirements

a. The Phase-In. The NPRM proposed to "phase in" the automatic crash protection requirements for light trucks in a similar manner as the automatic crash protection requirements were phased-in for passenger cars. The commenters supported the concept of implementing automatic crash protection requirements for light trucks by a "phase-in." This rule adopts a "phase-in" for automatic crash protection requirements.

To allow sufficient leadtime before the start of the phase-in for automatic crash protection in light trucks, the agency proposed to begin the phase-in with vehicles manufactured on or after September 1, 1993. This schedule was proposed to allow manufacturers two years after implementation of the dynamic testing requirements for light trucks (on September 1, 1991) to complete the engineering steps and certification testing needed to install automatic crash protection in light trucks. The agency believed this period of leadtime was sufficient to develop automatic crash protection for light trucks because, at the time of the NPRM, NHTSA believed that passenger car technology could be "readily transferred" to light trucks.

A delay in the beginning of the phase-in was urged by all the vehicle manufacturers that commented on that aspect of the notice. They emphasized the number of new regulations that will take effect during this time period, including the extension of several passenger car standards to light trucks, the expiration (in September 1993) of the "one car credit" for passenger cars with

an air bag at the driver's position, and new side impact standards for passenger cars. The commenters asserted that the cumulative effect of all these new requirements would tax the engineering, design, development, and testing staff and resources of the vehicle manufacturers to a greater extent than was acknowledged in the NPRM.

Other vehicle manufacturers commented that the timing of the start of the phase-in period would affect the type of automatic crash protection that was installed in light trucks. Because of the development work that will have to be done, especially for the sensors, to install air bags on light trucks, the manufacturers said that an early start to the phase-in would result in manufacturers installing less innovative forms of automatic crash protection, such as non-motorized automatic safety belts. The point of these comments was that the agency would inadvertently discourage the installation of more advanced means of automatic crash protection, such as air bags, if NHTSA required the phase-in to begin too early.

NHTSA has carefully reexamined the proposed September 1, 1993 starting date for the phase-in in light of these comments. In the NPRM, the agency stated that it did not want to begin the phase-in for automatic crash protection too soon after the September 1, 1991 implementation of the dynamic testing requirements for manual safety belts in light trucks. The comments to the NPRM indicate that the transfer of air bag technology from passenger cars to light trucks may be more complex than the agency believed, especially the sensors to deploy the air bag on vehicles that are used off-road. Vehicle manufacturers will need time to develop air bag systems for light trucks. The less time that is available for development and installation of automatic crash protection in light trucks, the less likely it is that manufacturers will choose the more difficult and riskier course of installing more innovative types of automatic crash protection, such as air bags. Instead, the manufacturers would be more likely to install non-motorized automatic safety belts. The agency does not want to inadvertently discourage efforts to install air bags or other innovative types of automatic crash protection in light trucks. After further considering this issue, NHTSA has decided to delay the start of the phase-in period for an additional year. Hence, this rule provides that the automatic restraint requirements will apply to light trucks manufactured on or after September 1, 1994.

A related question concerns the percentage of each manufacturer's light trucks that should be required to be equipped with automatic crash protection in each year of the phase-in, and the length of the phase-in before all subject light trucks should be required to be equipped with automatic crash protection. The NPRM proposed a three-year phase-in, with 20 percent of a manufacturer's light trucks required to offer automatic crash protection in the first year of the phase-in, 50 percent doing so in the second year of the phase-in, and all light trucks manufactured two years or more after the start of the phase-in equipped with automatic crash protection. Several commenters asked that this phase-in be extended. For example, GM asked that the agency use the same four-year phase-in that was used for passenger cars (10, 25, 40, and 100 percent), while Chrysler asked for a five-year phase-in (10, 25, 50, 75, and 100 percent).

NHTSA explained in the NPRM that the phase-in proposed for light trucks was more rapid than what was specified for passenger cars, because the phase-in for automatic crash protection in passenger cars reflected some considerations that are not present for automatic crash protection in light trucks. These considerations were:

1. The need for public familiarity with and acceptance of the different types of automatic crash protection;

2. The need for vehicle manufacturers to design and incorporate automatic crash production in their production vehicles for the first time; and

3. The need to establish a supplier base for automatic crash protection systems.

None of these three considerations apply to the same extent for light trucks. By the start of this phase-in in September of 1994, the public will have seen automatic crash protection in all new passenger cars made in the preceding five years. The manufacturers will be able to apply the engineering knowledge and experience that they have acquired over that period to solve the problems that must be overcome to provide automatic crash protection in light trucks. Finally, the air bag suppliers that commented on this rulemaking stated that they will have no trouble developing sufficient capacity to meet the anticipated future demand for their products in light trucks. Hence, NHTSA has concluded that it is appropriate to require a more rapid introduction of automatic crash protection in light trucks than was required in passenger cars.

Ford commented that it supported NHTSA's proposal to adopt a more rapid introduction of automatic crash protection in light trucks than in passenger cars. However, Ford's comments urged the agency to add one additional year to the phase-in, and require 90 percent of light trucks to offer automatic crash protection in this additional year. According to Ford, this 90 percent year would effectively require automatic crash protection on nearly all light trucks, while allowing an additional year to address any unique problems that may arise with particular types of low-volume light trucks, such as larger off-road vehicles.

NHTSA has concluded that this comment has merit. There are many more types of light trucks than passenger cars. If any unanticipated problems should arise in connection with equipping light trucks with automatic crash protection, it is most likely that those problems would occur for one of the unusual (i.e., limited production volume) light truck configurations. A third year of a phase-in set at the 90 percent level would ensure that the public has nearly all the benefits expected from automatic crash protection in light trucks, while also allowing the manufacturers flexibility to accommodate some of the more difficult engineering problems presented by a requirement for automatic crash protection in all light trucks. For example, adding a third year to the phase-in in which 90 percent of all light trucks are required to offer automatic crash protection would permit Chrysler an additional year of time to equip its convertibles and open-body vehicles with automatic crash protection. At the same time, Chrysler would be required to install automatic crash protection in the vast majority of its other light trucks, including minivans and pickups. Accordingly, Ford's suggestion is adopted in this final rule.

The agency also asked for comments on whether small buses should be excluded from the automatic crash protection requirements during the phase-in, and be required to be equipped with automatic crash protection requirements at the end of the phase-in (September 1, 1977). This would have been similar to the approach used for convertible passenger cars during the phase-in of the automatic crash protection requirements for passenger cars. Chrysler and Ford commented that there was no need for small buses to be excluded from the automatic crash protection requirements during the phase-in, and no commenter suggested that small buses should be

excluded during the phase-in. Hence, NHTSA has not included any such provision in this final rule.

Range Rover commented that the proposed phase-in schedule would, in effect, require light truck manufacturers that produce only one model to provide automatic crash protection in 100 percent of their light trucks in the first year of the phase-in. This is because manufacturers that make several models of light trucks can select a few models for automatic crash protection to comply with the early years of the phase-in and leave production of the other models unchanged. However, the manufacturer of a single light truck model must design, certify and put into production automatic crash protection for its entire fleet (the single model) beginning with the first year of the phase-in. Range Rover commented that this was unfair, and that the phase-in provided no flexibility or relief for small, single line manufacturers.

NHTSA believes that the proposed phase-in schedule can be viewed as being not necessarily any more difficult for single line manufacturers than for large manufacturers. Since the proposed phase-in schedule requires at least 20 percent of a manufacturer's light trucks to comply with the new automatic crash protection requirement in the first year of the phase-in, in practice each manufacturer must bring at least one model into compliance for that year. Viewed in this way, the burden on a manufacturer with only one model in the U.S. market to bring one model into compliance for the first year may be regarded as not being any different than that of a manufacturer which sells many models. NHTSA further notes that the phase-in for automatic crash protection in passenger cars made no special provisions for single line manufacturers and those manufacturers were able to comply with that phase-in.

On the other hand, the agency recognizes that a single model represents all of a single line manufacturer's production and only a small portion of a multi-line manufacturer's production. It also recognizes that a greater portion of a single line manufacturer's engineering expertise and other resources will be called upon to bring that single line into compliance than a multi-line manufacturer will have to use to achieve compliance for a single line.

The agency has identified an alternative compliance schedule which it believes would help meet the concerns of single line manufacturers, while also being consistent with the need for motor vehicle safety. Under this option, a manufacturer would not need to meet the new requirements for any of its light trucks during the first year of the phase-in (September 1, 1994 to August 31, 1995), but would then be required to meet the requirements for all of its light trucks beginning with the second year of the phase-in (September 1, 1995 to August 31, 1996). A manufacturer choosing this option would thus have four full model years of leadtime to meet the new requirements. While this option would be available to all manufacturers, the information currently available indicates that the larger manufacturers will choose to comply with the 20/50/90 phase-in. NHTSA believes that the 0/100/100 phase-in option would be consistent with the need for motor vehicle safety, since the number of light trucks meeting the new automatic crash protection requirements during the three-year phase-in period would be considerably higher under this option than under the other 20/50/90 phase-in schedule. Therefore, this final rule adopts an optional phase-in schedule of 0/100/100 to address the concerns of single line manufacturers, as expressed in Range Rover's comment.

b. Calculation of Compliance with Phase-In. NHTSA proposed to carry over most of the procedures used in calculating compliance with the phase-in of passenger cars with automatic crash protection so as to make the same procedures apply during the phase-in of automatic crash protection in light trucks. Specifically, NHTSA proposed to use the same means for assigning responsibility for vehicles with more than one statutory "manufacturer" and the same means for specifying how to calculate the appropriate percentage of the manufacturer's total production during the phase-in. No commenters addressed these proposals, so they are adopted for the reasons set forth in the NPRM.

c. Phase-In Exclusion for Vehicles Manufactured in Two or More Stages and for Altered Vehicles. The NPRM proposed that the automatic crash protection requirements would not apply during the phase-in period to light trucks that were altered or manufactured in two or more stages, but that all light trucks would be subject to those requirements after the phase-in expires. After considering all comments, NHTSA has decided to adopt that proposal.

The Safety Act requires that every manufacturer certify that each of its vehicles complies with all applicable safety standards. NHTSA has previously recognized that this statutory requirement could impose unreasonable burdens on final stage manufacturers if they had to certify not only the work they had performed on the finished vehicle, but also the work performed on the incomplete vehicle by its manufacturer (generally large manufacturers such as Chrysler, Ford, and GM). Therefore, the agency adopted regulations that prescribe the method by which manufacturers of vehicles manufactured in more than one stage shall assure conformity with the safety standards. 49 CFR 567.5 and part 568.

Under 49 CFR 568.4(a)(7), the manufacturer of an "incomplete vehicle," as defined in 49 CFR 568.3, must provide an "incomplete vehicle document" that states, for each applicable safety standard, either (i) that the vehicle when completed will conform to the standard if no alterations are made in specified components of the vehicle; (ii) the specific conditions of final manufacture under which the completed vehicle will conform to the standard; or (iii) that conformity with the standard is not substantially affected by the design of the incomplete vehicle, and that the incomplete vehicle manufacturer makes no representation as to conformity. Thus, for all standards "affected" by the design of the incomplete vehicle, if the final stage manufacturer completes the vehicle within the specifications set forth by the incomplete vehicle manufacturer, it can be assured that the completed vehicle will comply with the applicable standards.

In addition, pursuant to 49 CFR 567.5(a), the manufacturer of a "chassis-cab," the most common form of incomplete vehicle, must certify that the completed vehicle will conform to all applicable standards if it is completed in accordance with the incomplete vehicle document furnished pursuant to part 568. (A chassis-cab is defined in 49 CFR 567.3 as "an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.") Pursuant to 49 CFR 567.5(c), if a final stage manufacturer completes a chassis-cab in accordance with its manufacturer's specifications, it need state only that fact on the certification label to impute responsibility for the completed vehicle's conformity with the applicable standards to the manufacturer of the chassis-cab. (Pursuant to section 159(c)(2) of the Safety Act, 15 U.S.C. 1419(c)(2), the final stage manufacturer is normally obligated to conduct any recalls that may be necessary to correct noncompliances with safety standards or safety-related defects. However, the manufacturers may assign this

responsibility among themselves by contract. 49 CFR 567.5(e), 568.7.)

NHTSA recognizes that manufacturers of incomplete vehicles that are not "chassis-cabs" [such as cowl chassis, cutaway chassis, and stripped chassis) are not required by § 567.5 to certify the compliance of their incomplete vehicles with applicable safety standards. They are, however, required by 49 CFR 568.4 to provide an "incomplete vehicle document" that describes the manner in which the incomplete vehicle may be completed and remain in compliance with the standards "affected" by the incomplete vehicle. On the other hand, the manufacturers of many of these chassis, such as those that do not have completed occupant compartments, will not be making any representations with respect to the conformity of their vehicles with Standard No. 208, since the design of the chassis may not "affect" that standard. Therefore, a final stage manufacturer that chooses to use such a chassis would have the duty to certify that the completed vehicle conformed with Standard No. 208, as would a final stage manufacturer that completed any chassis, including a chassis-cab, in a manner that was not consistent with the incomplete vehicle manufacturer's specifications.

Very few (if any) final stage manufacturers have the engineering and financial resources necessary to independently determine whether a completed vehicle complies with a complex safety standard such as Standard No. 208. Thus, as a practical matter, NHTSA anticipates that most, if not all, final stage manufacturers will have to complete their vehicles within specifications established by an incomplete vehicle manufacturer, and, in most cases, they will have to use chassis-cabs.

Similarly, an alterer must certify that every vehicle it alters complies with all applicable safety standards as altered. Alterers perform their alterations on vehicles that have already been certified as complying with all applicable safety standards. The alterer must certity that each of its vehicles continues to comply with all applicable safety standards after the alterer has performed its operations on the vehicle. Alterers must, therefore, have some independent basis for their certifications that the altered vehicles continue to comply with all applicable safety standards. Certifications of continuing compliance for altered vehicles may be based on, among other things, engineering analyses, computer simulations, actual testing, or instructions for alteration voluntarily provided by the original vehicle manufacturer in a "body builder's guide."

The National Truck Equipment Association (NTEA), an association of final stage manufacturers and alterers, suggested that vehicles produced in more than one stage should be excluded from the automatic crash protection requirements. In its comment, NTEA acknowledged that its members can pass through the certification on chassis-cabs that are completed in accordance with the incomplete vehicle manufacturer's instructions. NTEA claimed, however, that not all vehicles can be completed or modified in accordance with those instructions. NTEA suggested that the incomplete vehicle manufacturers might impose severe new restrictions that would effectively "force" final stage manufacturers to complete the vehicle outside the original manufacturer's instructions.

NHTSA has previously considered assertions that incomplete vehicle manufacturers would establish unreasonably stringent limitations on their vehicles. In the rules establishing dynamic testing requirements for manual safety belts in light trucks under Standard No. 208 (53 FR 50221; December 14, 1988) and extending Standard No. 204's steering column rearward displacement limitations to additional light trucks (54 FR 24344; June 7, 1989), NHTSA noted that it did not believe that any incomplete vehicle manufacturer could, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles. If any incomplete vehicle manufacturer were to do so, final stage manufacturers would purchase their incomplete vehicles from other manufacturers that had established more realistic limitations.

The agency's belief that market forces will prevent incomplete vehicle manufacturers from establishing unreasonably stringent limitations seems to have been correct. No manufacturer has provided NHTSA with any evidence that overly stringent limitations have been or will be imposed on incomplete vehicles subject to any of the existing crash testing requirements. Thus, NHTSA does not find persuasive NTEA's suggestion that unreasonably stringent limitations will be imposed on the completion of incomplete vehicles as a result of this amendment.

NHTSA recognizes that the adoption of the automatic crash protection requirements may lead incomplete vehicle manufacturers to impose some new limitations on the manner in which their vehicles may be completed, in order to assure that the completed vehicle will meet the requirements of the standard. However, there is no reason to believe that final stage manufacturers will be unable to complete their vehicles within those limitations.

NTEA's comments also addressed the fact, discussed above, that under 49 CFR 567.5, only manufacturers of incomplete chassis-cabs are required to provide a formal certification that can be "passed-through" by a final stage manufacturer. When completing an incomplete vehicle this is not a chassis-cab, or when completing an incomplete vehicle outside of the incomplete vehicle manufacturer's instructions, the final stage manufacturer would have to independently certify that the completed vehicle complied with the automatic crash protection requirements. NTEA argued that final stage manufacturers lack the financial and engineering expertise needed to make such a certification, and contended that this obliges NHTSA to permanently exempt those vehicles from the automatic crash protection requirements.

With respect to non-chassis-cabs, NHTSA reiterates that, as provided by 49 CFR part 568, completion of an incomplete vehicle in accordance with the specifications set forth in an incomplete vehicle document will ensure conformity with applicable standards and thus provide a basis for a final stage manufacturer to certify the completed vehicle. Therefore, with respect to those chassis for which the incomplete vehicle manufacturer provides specifications with respect to Standard No. 208, NTEA's concerns regarding the ability of final stage manufacturers to independently certify these vehicles are not well grounded. However, NHTSA acknowledges that most non-chassis-cabs will not include specifications for Standard No. 208. Thus, final-stage manufacturers that do not have an independent basis for certifying compliance with the automatic crash protection requirements will not be able to use non-chassis-cabs to complete vehicles within the weight ranges subject to the automatic crash protection requirements.

As discussed above, NHTSA agrees that as a practical matter, most final stage manufacturers will not have the resources to develop an independent basis to certify compliance with Standard No. 208 if they do not complete vehicles within the specifications established by incomplete vehicle manufacturers or if the incomplete vehicle manufacturer does not provide specifications applicable to that

standard. That is why the agency has consistently suggested that the simplest way for final stage manufacturers to assure that their vehicles will comply with the safety standards is to complete the vehicles in accordance with those specifications. A final stage manufacturer may have to "shop around" among different incomplete vehicles and different manufacturers to find an incomplete vehicle that can be completed in a manner that its customer desires, while remaining within the incomplete vehicle manufacturer's limitations. However, this is not an unreasonable burden in light of the safety benefits of automatic crash protection.

Moreover, NHTSA is not convinced that is will be impossible for final stage manufacturers to establish that vehicles that are completed outside of an incomplete vehicle manufacturer's specifications comply with the automatic crash protection requirements of Standard No. 208. Final stage manufacturers that complete vehicles outside the incomplete vehicle manufacturer's specifications are in the same position as alterers regarding the certification responsibility. That is, the final stage manufacturer and the alterer must base their certification of compliance with the automatic crash protection requirements of Standard No. 208 on the evaluations and analyses made by the final stage manufacturer or alterer, instead of basing their certification on the specifications the original vehicle manufacturer provided for the vehicle. Although it might be too difficult or expensive for an individual final stage manufacturer or alterer to independently certify compliance through crash tests, it may be feasible for serveral such entities to join together to conduct or sponsor crash testts and/or engineering analysis that would provide an adequate basis for certification.

Volkswagen commented that it believed that it will not be practicable for modified vehicles to comply with the automatic crash protection requirements, particularly if the incomplete vehicle is equipped with an airbag. According to Volkswagen, it is "virtually impossible" for the manufacturer of an incomplete vehicle with an airbag system to provide guidance and certification information to final stage manufacturers, in part because of the different types of special equipment and/or bodies that might be added to the incomplete vehicle. Further, according to Volkswagen, it would be impossible for final stage manufacturers to independently certify compliance without conducting a crash test for each specific configuration. Because of this alleged impracticability, Volkswagen concluded that any light trucks that are produced in two or more stages should be excluded from the automatic crash protection requirements.

NHTSA has previously explained in detail its rejection of similar arguments in the rulemakings extending dynamic testing of manual safety belts to light trucks under Standard No. 208 (53 FR at 50225–50228) and extending Standard No. 204's steering column rearward displacement limitations to additional light trucks (54 FR at 24347–24350). To briefly repeat, manufacturers of all light trucks have been required for more than a decade to certify that their vehicles comply with three standards (Nos. 212, 219, and 301) that use a 30 mph barrier crash test to determine compliance. Throughout that period, manufacturers of incomplete vehicles have been required by 49 CFR part 568 to provide incomplete vehicle documents that contain certification information and instructions to final stage manufacturers along with the incomplete vehicle. In order to have a basis for the specifications contained in the incomplete vehicle documents—*i.e.*, to assure that vehicles that are completed within those specifications will comply with applicable crash test standards—the incomplete vehicle manufacturer must conduct some analysis of how the chassis would perform in a crash test. While this analysis may be more complex for the dynamic testing and automatic crash protection requirements of Standard No. 208 than for the other standards that require crash testing, the process is not fundamentally different. Thus, Volkswagen's suggestion that it is not feasible for incomplete vehicle manufacturers to provide guidance to final stage manufacturers is not persuasive.

Ford commented that it believed NHTSA had underestimated the difficulty that the automatic crash protection requirements would pose for final stage manufacturers and alterers. Ford commented that it would "find it relatively manageable" to provide guidance and appropriate limits for Ford vehicles used by final stage manufacturers and alterers if the vehicles incorporated Ford-designed seats and occupant protection systems. However, Ford also commented that "alterers appear to believe" that installing different seats is fundamental to their manufacturing and marketing operations and stated that it was unlikely that Ford could provide much useful guidance for seats and occupant protection systems that are not designed and installed by Ford.

Ford's comment is consistent with its reported response to the dynamic testing requirement that will apply to manual safety belts in light trucks manufactured on or after September 1, 1991. In a November 27, 1989 article on page E4 of Automotive News, it was reported that, for the purposes of the dynamic testing requirement, Ford's instuctions to final stage manufacturers and alterers would require the use of front seats installed by Ford. However, that same article reported that Chrysler and General Motors plan to develop guidelines that will allow final stage manufacturers and alterers to replace the original front seats and still be covered by the original certification of compliance. Thus, it appears that such flexibility is practicable.

If Ford does specify in its incomplete vehicle documents and body builders' guide that final stage manufacturers and alterers could only be assured of compliance with Standard No. 208 if they used Ford's seats, final stage manufacturers and alterers would have two options that would enable them to avoid having to independently certify compliance. They could either use Ford vehicles and complete or modify the vehicle in accordance with Ford's instructions, or use vehicles produced by a different manufacturer that permit the use of a variety of seats. In either case, no significant compliance burden would be imposed on the final stage manufacturer or alterer.

For the foregoing reasons, NHTSA has concluded that there is no need to exclude vehicles produced in two or more stages or altered vehicles from the automatic crash protection requirements once the phase-in has ended. However, somewhat different considerations apply to the issue of whether those requirements should apply during the phase-in, which ends August 31, 1997.

During the phase-in period, manufacturers of completed light trucks will be required to install automatic crash protection in some but not all of their vehicles. If automatic crash protection were not available in the particular type of chassis used by a final stage manufacturer or alterer (perhaps because the chassis manufacturer did not intend to install automatic crash protection in its completed vehicles that are based on that chassis), it is unlikely that the final stage manufacturer or alterer could design, install, and certify a system of automatic crash protection for the vehicle. In recognition of these difficulties, the agency proposed to

exclude light trucks manufactured in two or more stages and light trucks that are altered from the automatic crash protection requirements during the 20/50/90 phase-in period.

No commenter opposed this proposal and several supported it. NHTSA remains convinced that it would be impracticable to require final stage manufacturers and alterers to assure that a specified percentage of their vehicles complied with the automatic crash protection requirements of Standard No. 208 during the phase-in. Therefore, this final rule adopts the proposed exclusion of light trucks manufactured in two or more stages and light trucks that are altered from the automatic crash protection requirements during the phase-in. Because of this exclusion, this rule also adopts the proposal to allow original manufacturers the option to either include or exclude their light trucks that are sent to second stage manufacturers and alterers, when determining compliance during the phase-in period for automatic crash protection in light trucks. However, as indicated above, once the phase-in is completed, all light trucks must be equipped with automatic crash protection.

d. Phase-In Reporting Requirements. The agency proposed to adopt substantially the same reporting requirements for light trucks as were previously specified for passenger cars during the phase-in of the automatic crash protection requirements for those vehicles. The agency also proposed to not require information about altered light trucks and light trucks manufactured in two or more stages to be submitted in these reports, because manufacturers of those light trucks were not required to comply with the percentage requirements during the phase-in. No commenters addressed this subject. These requirements are adopted as proposed, for the reasons set forth in the NPRM.

e. Phase-In Certification Requirements. The NPRM proposed to require a separate certification to appear on light trucks that were produced during the phase-in and were intended to be among the percentage of their manufacturer's annual production certified as complying with the automatic crash protection requirements. During the phase-in of automatic crash protection, some of a manufacturer's vehicles are equipped with automatic crash protection, while the rest are equipped only with manual safety belts. However, the information on the certification labels on both vehicles equipped with automatic crash protection and those equipped with only manual safety belts would fail to differentiate between the vehicles.

Additionally, during a phase-in, manufacturers are permitted to equip those vehicles with both manual safety belts and air bags, for example, but not certify the vehicles as complying with the automatic crash protection requirements. Instead, the manufacturers could certify that the vehicles complied with Standard No. 208 by virtue of the manual safety belts and assert the position that the air bags were a voluntary additional means of occupant protection. In this case, nothing on the certification label would alert the agency that these vehicles were not certified as complying with the automatic crash protection requirements.

NHTSA proposed to address the practical difficulties that had arisen in these situations in the passenger car phase-in by requiring manufacturers to affix an additional certification label on their light trucks produced during the phase-in period, if the light trucks were certified as complying with the automatic crash protection requirement. This proposal reflected the agency's tentative conclusions that this additional certification would effectively solve those problems, while imposing only minimal added burdens on the manufacturers.

The commenters strongly disagreed with the agency's proposal. Ford commented that the additional certification label would likely be misleading to consumers. Ford also commented that agency personnel would have ample additional sources for learning whether particular vehicles were certified as complying with the automatic crash protection requirements, including the proposed reports and the proposed requirement to keep records of the vehicle identification numbers of the vehicles certified as complying with the automatic crash protection requirements. Chrysler, Nissan, and Volkswagen all commented that the proposed additional certification label would be an increased burden, even if it were only slight, and that the agency had not articulated any benefits, great or small, that would result from imposing that burden.

After reviewing these comments, the agency has concluded that the proposed additional certification label should not be adopted in this final rule. As noted in the comments, agency personnel will be able to obtain the necessary certification information if the proposed reporting and recordkeeping requirements are adopted for the phase-in. NHTSA can make that information available to the public if there is any confusion about particular light trucks during the phase-in. Thus, there is no compelling reason to require an additional certification label on light trucks during the phase-in.

f. Retention of VINs. For the phase-in of automatic crash protection for passenger cars, NHTSA determined that it was important for enforcement purposes that manufacturers maintain records of the vehicle identification number (VIN) and the type of automatic crash protection installed on each passenger car produced during the phase-in period that was reported to NHTSA as one of the manufacturer's cars equipped with automatic crash protection. Again with respect to passenger cars, the manufacturers were required to retain these records for slightly more than two years after the end of the phase-in. The agency proposed to adopt the same requirements for light trucks. No commenter offered any objections to this proposal. Therefore, this final rule adopts the proposed VIN recordkeeping requirement.

4. "One-Truck Credit" Provision

As the requirements for automatic crash protection were being phased-in for pasenger cars, NHTSA adopted provisions designed to give car manufacturers an incentive to use more innovative automatic crash protection systems in their vehicles. Accordingly, Standard No. 208 includes provisions so that each car equipped with a non-belt automatic crash protection system for the driver's position, such as an air bag or passive interior, and a manual safety belt for the right front passenger's position will be counted as a vehicle complying with the automatic crash protection requirements. These provisions are referred to as the "one-car credit." NHTSA repeatedly stated its belief that the "one-car credit" would encourage the introduction of non-belt automatic crash protection systems into passenger cars sooner than would occur if manufacturers were simply required to install automatic crash protection systems in both front seating positions simultaneously.

NHTSA tentatively determined it would also be appropriate to offer an incentive for light truck manufacturers to install more innovative systems of automatic crash protection. This tentative determination reflected the agency's belief that, as in the case of passenger cars, the relative technological ease of widespread

installation in light trucks of passenger-side air bags is less than that of passenger-side automatic belts. Absent some measures to equalize this technological disparity, NHTSA believes that light truck manufacturers would opt for the installation of automatic belts at both the driver's and passenger's positions, instead of installing an air bag at the driver's position and an automatic belt at the passenger's position. Thus, the agency proposed to offer the "one truck credit" to allow the passage of sufficient time for the relative technological difficulties of passenger-side air bags and passenger-side automatic belts to become nearly equal. The agency tentatively concluded that four years was the minimum time sufficient for that purpose. Therefore, the NPRM proposed that the one-truck credit be available for light trucks manufactured during the four year period after the beginning of the phase-in of the automatic crash protection requirement.

Chrysler, Ford, and General Motors supported the proposed one-truck credit. The only commenter that objected to the proposal was Motor Voters. According to Motor Voters, market forces may be sufficient to encourage light truck manufacturers to choose air bags as the means for complying with the automatic crash protection requirement. In this case, there would be no need for any additional regulatory incentives. Because of this, Motor Voters suggested in its comments that the one-truck credit be allowed during the phase-in period, but that the one-truck credit provision be ended when the phase-in expires.

NHTSA concurs with Motor Voters' belief that the one-truck credit provision should not be offered for an excessive period of time, because it would then serve to delay for too long the safety benefits of automatic crash protection for the right front passenger position in light trucks. In the preamble to the NPRM, NHTSA also explained that it believed that, if the one-truck credit provision were available for a period of less than four years, the short credit would not provide sufficient time to resolve technical issues associated with passenger side air bags in light trucks. Hence, if the one-truck credit were made available for too short a time, it would do little to encourage light truck manufacturers to install driver-side air bags in light trucks. Motor Voters' comments did not set forth any new facts or information not previously considered by the agency in reaching its tentative decision on the appropriate length of time for the one-truck credit provision. A review of the available information reinforces NHTSA's technical judgment that there are special technical problems presented by the installation of air bags in light trucks that can be alleviated by allowing the one-truck credit. After this review, NHTSA has decided to adopt the proposed four-year duration for the one-truck credit in this final rule.

Other "Credit" Issues During the Phase-In

The agency proposed to adopt the same 1.5 vehicle credit for light trucks that was available for passenger cars during the phase-in. Pursuant to this provision, cars equipped with an air bag or other non-belt means of automatic crash protection at the driver's position, and any type of automatic crash protection at the right front passenger's position, were counted as 1.5 cars equipped with automatic crash protection during the phase-in of the automatic crash protection requirements for passenger cars.

In its comments, Ford stated that the 1.5 credit provides some incentive for truck manufacturers to introduce passenger-side air bags, but that a two-truck credit would be more effective as an incentive. Ford acknowledged that Porsche had sought a two-car credit for passenger cars, and that this request was denied by NHTSA. 51 FR 42598; November 25, 1986. However, Ford commented that most of the agency's reasons for denying the two-car credit for cars would not be applicable for light trucks. Hence, Ford asked NHTSA to reexamine this issue.

In its denial of a two-vehicle credit provision for cars, NHTSA explained that the 1.5 vehicle credit already provided an extra incentive for manufacturers to install air bags for both the driver and right front passenger and that no manufacturer had provided detailed data specifically explaining how a two-car credit would serve as an additional incentive to any manufacturer to change its production plans during the phase-in. Absent such a quantification, NHTSA's judgment was that a two-vehicle credit provision could actually serve as a disincentive to installing air bags in the greatest number of vehicles during the phase-in.

The agency believes this reasoning is equally applicable to light trucks. Neither ford nor any other manufacturer has provided any details about how a two-truck credit would affect their plans to install air bags in their trucks. Absent such information, it is NHTSA's technical judgment that an additional 0.5 vehicle credit over and above the existing 1.5 vehicle credit for trucks with both driver and passenger air bags would not ensure more air bags in light trucks during the phase-in. Hence, this final rule does not include a two-truck credit provision.

During the phase-in of automatic crash protection in passenger cars, NHTSA decided to permit the "carry-forward" of credits for vehicles equipped with automatic crash protection. The carry-forward provisions allow manufacturers that exceed the minimum percentage of vehicles equipped with automatic crash protection in one year of the phase-in to count those excess vehicles as credits toward the specified percentage during any subsequent model years of the phase-in. Additionally, for passenger cars, manufacturers were allowed to count cars produced during the year before the start of the phase-in as credits toward the specified percentage in any year of the phase-in. NHTSA explained that these carry-forward credits would encourage the early introduction of more vehicles with automatic crash protection, provide increased flexibility for vehicle manufacturers, and assure an orderly build-up of production capability for automatic crash protection. The agency proposed to allow the same carry-forward of credits during the phase-in of automatic crash protection for light trucks.

Ford commented that it supported the proposed carry-forward of credits. However, Ford requested that manufacturers be permitted to carry-forward credits for light trucks equipped with automatic crash protection that are produced in the two years before the start of the phase-in (i.e., September 1, 1992 to August 31, 1994), instead of the proposed carry-forward of credits for automatic crash protection in light trucks produced in the year before the start of the phase-in (i.e., September 1, 1993 to August 31, 1994). Ford commented that this extension of the carry-forward credit provision would encourage manufacturers to introduce automatic crash protection in light trucks as soon as possible.

NHTSA is persuaded by this comment. To the extent that light truck manufacturers are not permitted to receive credit for trucks equipped with automatic crash protection produced before the start of the phase-in, those manufacturers would have an incentive to hold off the installation of automatic crash protection in their light trucks until they would receive such credit. Otherwise, a manufacturer that installed automatic crash protection as soon as it could in its light trucks would end up installing automatic crash protection in

a higher percentage of its vehicles than manufacturers who make lesser efforts to install automatic crash protection, while both received the same credits for purposes of complying with the phase-in. For example, a manufacturer that installs automatic crash protection in ten percent of its vehicles the model year before the phase-in starts and then in an additional ten percent of its vehicles during the first year of the phase-in (for a total of 20 percent of its vehicles) would not be credited any differently than a manufacturer that equipped 20 percent of its vehicles with automatic crash protection during the first year of the phase-in, if there were no provision allowing carry-forward of credits. Hence, an extension of the period for carry-forward credits serves the interests of safety by encouraging the earliest possible introduction of automatic crash protection. Accordingly, this rule adopts Ford's suggestion to permit the carry-forward of credits for light trucks equipped with automatic crash protection produced in the two years before the start of the phase-in.

Obviously, light trucks that are not certified as complying with the automatic crash protection requirements cannot be carried forward as credits toward complying with the automatic protection requirements. The agency has slightly revised the provision for calculating credits in S4.2.5.5 of Standard No. 208 and the reporting requirements in § 585.5(b)(2), to ensure that all parties understand that carry-forward credits are only available for light trucks certified as providing automatic crash protection.

Finally, Mazda asked the agency to permit the "carry-back" of credits, a procedure that was explicitly rejected for the passenger car phase-in. "Carry-back" provisions allow manufacturers that fall short of the minimum percentage of vehicles equipped with automatic crash protection in one year of the phase-in to make up the shortfall in future model years of the phase-in. Carry-back provisions were rejected for the passenger car phase-in, because these provisions would allow vehicle manufacturers to delay the installation of automatic crash protection and result in lesser safety benefits for the public.

Mazda did not question the agency's previous conclusions that carry-back credits delay the availability of automatic crash protection. Absent any additional information, NHTSA has no basis for changing its previously stated rejection of the concept of carry-back credits during the phase-in period.

5. Compatibility with Child Safety Seats

In the NPRM, the agency proposed to include special requirements for the passenger seating position in two-seater vehicles. The agency proposed that the automatic crash protection system installed at the right front seating position must be capable of being adjusted to secure a child safety seat or the seating position must be equipped with an original equipment manual lap or lap/shoulder belt to secure a child seat. Many vehicle manufacturers that commented on the NPRM objected to this proposal. Motor Voters and the Automotive Occupant Restraints Council both supported the proposal.

After the publication of this NPRM on automatic crash protection in light trucks, the agency published an NPRM devoted to the subject of the compatibility of safety belt systems with child safety seats; 55 FR 30937; July 30, 1990. Instead of addressing this issue in a piecemeal fashion in several different rulemakings, NHTSA believes it is more appropriate to use the child seat compatibility rulemaking as the forum for addressing all concerns about the compatibility of child safety seats and the various occupant protection systems, including automatic crash protection systems. Hence, the subject will not be addressed further in this rulemaking action.

Technical Amendments of Regulatory Language

Ford concluded its comments with a request that NHTSA clarify the interrelationship of three rulemaking actions under Standard No. 208 addressing occupant protection requirements for light trucks. The first of these was the rule requiring dynamic testing of manual safety belts installed in front outboard seating positions in light trucks (52 FR 44898; November 23, 1987), codified at S4.2.2 and S4.2.3 of Standard No. 208. The second rulemaking was the requirement for rear seat lap/shoulder safety belts in light trucks (54 FR 46257; November 2, 1989), codified at S4.2.4 of Standard No. 208. The third rulemaking is this rulemaking requiring automatic crash protection in light trucks, codified at S4.2.5 and S4.2.6 of Standard No. 208.

Ford commented that S4.2.4 appears to require lap/shoulder belts in rear outboard seating positions of most light trucks. However, Ford correctly noted that the dynamic testing requirements for manual safety belts in light trucks and the automatic crash protection requirements for light trucks refer to the older passenger car options for occupant protection, which permit the installation of lap-only safety belts in rear outboard seats of vehicles. Ford suggested that this be clarified. This rule makes the requested clarification, so that no unintended confusion will arise about whether light trucks must be equipped with lap/shoulder belts in rear seating positions.

Ford also commented that it was unclear if the dynamic testing requirements for light trucks equipped with manual safety belts applied to light trucks equipped with manual safety belts that are produced during the phase-in period for automatic crash protection. The answer is that dynamic testing will apply to all subject light trucks manufactured on or after September 1, 1991, including the years during which automatic crash protection will be phased in, that meet the requirements of Standard No. 208 by providing manual lap/shoulder belts at front outboard seating positions. Language has been added to the dynamic testing requirements to make this requirement more explicit.

Finally, Ford commented that it assumed light trucks not subject to the dynamic testing requirements but that would be subject to the automatic crash protection requirement (motor homes, convertibles, open-body vehicles, etc.) would be excluded from a manufacturer's production total when determining compliance with the phase-in. This assumption is incorrect. NHTSA explicitly proposed to include these vehicles and did not propose to exclude such vehicles during the phase-in. This rule does not have any such exclusion.

Regulatory Impacts

NHTSA has examined the impacts of this rulemaking action and determined that it is both "major" within the meaning of Executive Order 12291 and "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of both the costs and the public interest associated with this proposed rulemaking action. Accordingly, a Final Regulatory Impact Analysis (FRIA) has been prepared for this proposal, and a copy of the FRIA has been placed in the public docket for this rulemaking action. A copy of the FRIA may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Table 1 presents the incremental benefits of automatic crash protection assuming all light trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less would have automatic belts, or assuming all light trucks would have

driver side air bags, or assuming all light trucks would have air bags for the driver and right front seat passenger. These benefits can be considered to accrue over the lifetime of one model year's production when all light trucks in that model year have automatic crash protection or these benefits can be considered annual benefits at some future date when all light trucks in the fleet incorporate automatic crash protection. These incremental benefits are compared to manual safety belt use rates of 26.6 to 40 percent (26.6 percent was derived from the Fatal Accident Reporting System, and represents belt use in potentially fatal accidents by light truck occupants for 1989, 40 percent is an estimate of potential safety belt use levels in 1995 based on a continuing trend of increased use due to State safety belt use laws, consumer safety awareness and safety belt education programs.)

TABLE 1.—INCREMENTAL BENEFITS FOR AUTOMATIC CRASH PROTECTION ASSUMING LIGHT TRUCKS WITH A GVWR OF 8,500 POUNDS GVWR OR LESS AND UNLOADED VEHICLE WEIGHT OF 5,500 POUNDS OR LESS WERE EQUIPPED WITH THAT TYPE OF AUTOMATIC PROTECTION

	Fatalities	AIS 2-5 injuries	AIS 1 injuries
Driver air bags	1,573 to 1,855	18,688 to 22,178	32,837 to 40,423.
Driver and right front air bags	2,016 to 2,378	23,960 to 28,434	42,098 to 51,824.
Automatic belts usage:			
50 Percent	370 to 1,216	4,353 to 13,829	7,258 to 16,984.
60 Percent	949 to 1,796	10,881 to 20,357	14,517 to 24,243.
70 Percent	1,529 to 2,375	17,409 to 26,883	21,775 to 31,501.

The estimated cost of automatic crash protection for light trucks are shown in Table 2.

TABLE 2.—ESTIMATED CONSUMER COSTS OF AUTOMATIC CRASH PROTECTION

Restraint system	Consumer cost (1989 $)
Driver air bag	$277.86
Driver and RF air bag	404.16
Automatic belts motorized	185.66
Automatic belts non-motorized	44.21

The estimated lifetime fuel costs for the added weight of these various types of automatic protection are shown in Table 3.

TABLE 3.—LIFETIME FUEL COST

[Present Value, 10% Annual Discount Rate]

Restraint system	Incremental weight per vehicle (lbs.)	Total vehicle lifetime fuel cost (1989 $)
Driver air bag	9	$12.38
Driver and RF air bag	21	28.80
Automatic belts motorized	10	13.75
Automatic belts non-motorized	5	6.89

TABLE 4.—TOTAL VEHICLE COSTS INCLUDING LIFETIME FUEL COST

[Present Value, 10% Annual Discount Rate]

Restraint system	Incremental weight per vehicle (lbs.)	Total per vehicle cost including lifetime fuel cost (1989 $)
(Without Secondary Weight)		
Driver air bag	9.0	$290.24
Driver and RF air bag	21.0	432.96
Automatic belts motorized	10.0	199.41
Automatic belts non-motorized	5.0	51.10
(With Secondary Weight)		
Driver air bag	15.3	$303.76
Driver and RF air bag	35.7	464.47
Automatic belts motorized	17.0	214.43
Automatic belts non-motorized	8.5	58.62

Additionally, the agency has anlayzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. This anlaysis appears at section IV of the FRIA. Based on the available information, the agency does not believe that a substantial number of small entities will be affected by this final rule, and that any effects on small entities would not be significant economic impacts. Interested persons are invited to examine this section of the FRIA.

The agency has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant effect on human environment. A discussion of this determination can be found in the Environmental Assessment that has been prepared for this rule. This report is available in the public docket for this rulemaking action.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) had already approved NHTSA's requirement for phase-in reporting for automatic crash protection in passenger cars (OMB #2127-0535). However, this rule extends the existing passenger car requirements to light trucks during the phase-in of automatic crash protection. This extension is considered to be an information collection requirement, as that term is defined by OMB in 5 CFR part 1320. Accordingly, the information collection requirement was submitted to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The reporting and recordkeeping requirements in this rule have been assigned OMB #2127-0535 and approved through April 30, 1993.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter V of title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.208, S4.2 of Standard No. 208 is amended by revising S4.2.2, S4.2.3, the title of S4.2.4, and S8.1.1 introductory text and (b), and adding new S4.2.5 through S4.2.5.6.2, S4.2.6, and S4.4.4, to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection

* * * * *

S4.2 *Trucks and multipurpose passenger vehicles with GVWR of 10,000 pounds or less.*

* * * * *

S4.2.2 *Trucks and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997.* Except as provided in S4.2.4, each truck and multipurpose passenger vehicle with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991 and before September 1, 1997, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each Type 2 seat belt assembly installed in a front outboard designated seating position in accordance with S4.1.2.3 shall meet the requirements of S4.6.

S4.2.3 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with either a GVWR or more than 8,500 pounds but not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less.* Except as provided in S4.2.4, each truck and multipurpose passenger vehicle manufactured on or after September 1, 1991, that has either a gross vehicle weight rating which is greater than 8,500 pounds, but not greater than 10,000 pounds, or has an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

S4.2.4 *Rear outboard seating positions in trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000 pounds or less.* * * *

* * * * *

S4.2.5 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1997.*

S4.2.5.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1995.*

S4.2.5.1.1 Subject to S4.2.5.1.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of standard.

S4.2.5.1.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.1.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 20 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1991, and before September 1, 1994, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S4.2.5.1.1.

S4.2.5.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995 and before September 1, 1996.*

S4.2.5.2.1 Subject to S4.2.5.2.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 and before September 1, 1996, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.2.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.2.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 50 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1992, and before September 1, 1995, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S4.2.5.2.1.

S4.2.5.3 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1996 and before September 1, 1997.*

S4.2.5.3.1 Subject to S4.2.5.3.2 and S4.2.5.5 and except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is

manufactured on or after September 1, 1996 and before September 1, 1997, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.3.2 Subject to S4.2.5.5, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.3.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 90 percent of:

(a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1993, and before September 1, 1996, by each manufacturer that produced such vehicles during each of those annual production periods, or

(b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S4.2.5.3.1.

S4.2.5.4 *Alternative phase-in schedule.* A manufacturer may, at its option, comply with the requirements of this section instead of complying with the requirements set forth in S4.2.5.1, S4.2.5.2, and S4.2.5.3.

(a) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars).

(b) Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle, other than walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured on or after September 1, 1995 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

(c) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1995, but before September 1, 1998, whose driver's seating position complies with the requirements of S4.1.2.1(a) of this standard by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1.

S4.2.5.5 *Calculation of complying trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.*

(a) For the purposes of the calculations required in S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2 of the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that comply with S4.1.2.1 (as specified for passenger cars):

(1) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position complies with the requirements of S4.1.2.1(a) by any means is counted as 1.5 vehicles, and

(2) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, is counted as one vehicle.

(3) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2. Such vehicles may be excluded from all calculations of compliance with S4.2.5.1.2, S4.2.5.2.2, and S4.2.5.3.2.

(b) For the purposes of complying with S4.2.5.1.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1994, and

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars).

(c) For the purposes of complying with S4.2.5.2.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1995,

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars), and

(3) Is not counted toward compliance with S4.2.5.1.2.

(d) For the purposes of complying with S4.2.5.3.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1996,

(2) Is certified as complying with S4.1.2.1 (as specified for passenger cars), and

(3) Is not counted toward compliance with S4.2.5.1.2 or S4.2.5.2.2.

S4.2.5.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.*

S4.2.5.6.1 For the purposes of calculating average annual production for each manufacturer and the amount of vehicles manufactured by each manufacturer under S4.2.5.1.2, S4.2.5.2.2, or S4.2.5.3.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.5.6.2:

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle that is manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.5.6.2 A truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified in an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.2.5.4.1.

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Except as provided in S4.2.4, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) of this standard, except that walk-in van-type trucks and vehicles designed to be exclusively sold to the U.S. Postal Service may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997, but before September 1, 1998, whose driver's seating position complies with the requirements of S4.1.2.1(a) of this standard by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with § 5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2., shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.4 *Buses.*

* * * * *

S4.4.4 *Buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994.* Each bus with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994 shall comply with the requirements of S4 2.5 and S4.2.6 of this standard, as applicable, for front seating positions, and with the requirements of S4.4.3.2 or S4.4.3.3 of this standard, as applicable, for all rear seating positions.

* * * * *

S8 *Test conditions.*

* * * * *

S8.1.1 Except as provided in paragraph (c) of S8.1.1, the vehicle, including test devices and instrumentation, is loaded as follows:

* * * * *

(b) *Multipurpose passenger vehicles, trucks, and buses.* A multipurpose passenger vehicle, truck, or bus is loaded to its unloaded vehicle weight plus 300 pounds or its rated cargo and luggage capacity weight, whichever is less, secured in the load carrying area and distributed as nearly as possible in proportion to its gross axle weight ratings, plus the weight of the necessary anthropomorphic test devices. For the purposes of § 8.1.1, unloaded vehicle weight does not include the weight of work-performing accessories. Vehicles are tested to a maximum unloaded vehicle weight of 5,500 pounds.

* * * * *

PART 585—[AMENDED]

3. The authority citation for part 585 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

4. Section 585.1 is revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208).

5. Section 585.2 is revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production of those vehicles.

6. Section 585.3 is revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. However, this part does not apply to any such manufacturers whose production consists exclusively of:

(a) Vehicles manufactured in two or more stages;

(b) Walk-in van-type trucks;

(c) Vehicles designed to be exclusively sold to the U.S. Postal Service; and/or

(d) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

7. Section 585.4 is revised to read as follows:

§ 585.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) *Bus, gross vehicle weight rating* or *GVWR, multipurpose passenger vehicle, truck,* and *unloaded vehicle weight* are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of the prior year and August 31 of the year in question, inclusive.

8. Section 585.5 is revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements.* (1) Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31, 1997, each manufacturer that manufactured any trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be exclusively sold to the U.S. Postal Service, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash

protection in such vehicles manufactured during that production year.

(2) Each report submitted in compliance with paragraph (a)(1) of this section shall:

(i) Identify the manufacturer;

(ii) State the full name, title, and address, of the official responsible for preparing the report;

(iii) Identify the production year for which the report is filed;

(iv) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter);

(v) Provide the information specified in paragraph (b) of this section;

(vi) Be written in the English language; and

(vii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content.* (1) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds of less during each of the three preceding production years must report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured during the production year for which the report is filed.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(i) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(ii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(iii) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.2.5.6.2 of § 571.208 of this chapter shall:

(i) Report the existence of each such contract, including the names of all parties to each such contract, and explain how the contract affects the report being filed; and

(ii) Report the number of vehicles covered by each such contract.

9. Section 585.6 is revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5(b)(2), until December 31, 1999.

Issued on March 20, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-6965 Filed 3-22-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 58
Tuesday, March 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-37-AD]

Airworthiness Directives: British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would require the installation of a new axle washer and a new axle nut on all main landing gears (MLG). This proposal is prompted by reports of wheel bearing failure, which resulted in the MLG wheel separating from the axle. This condition, if not corrected, could result in loss of a main landing gear wheel from the axle and reduced controllability of the airplane on takeoff or landing.

DATES: Comments must be received no later than May 14, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-37-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-37-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There have been recent reports of wheel bearing failure, which resulted in the MLG wheel separating from the axle on Model ATP airplanes. This condition, if not corrected, could result in the MLG wheel separating from the axle and reduced controllability of the airplane on takeoff or landing.

British Aerospace has issued Service Bulletin ATP-32-28, dated November 6, 1990, which references Dowty Aerospace Service Bulletin 200-32-137, and describes procedures for the installation of a new axle washer and a new axle nut on all main landing gears (MLG). The new washer will ensure that, in the event of a wheel bearing failure, the wheel will be retained on the axle by the washer. The United Kingdom CAA has classified the Dowty Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a new axle washer and new axle nut on all MLG's in accordance with the Dowty Aerospace service bulletin previously described.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $2,866. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,526.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial numer of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model ATP series airplanes, on which Modification (c)AC11431 has not been accomplished, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the main landing gear (MLG) wheel from the axle and reduced controllability of the airplane on takeoff or landing, accomplish the following:

A. Install a new axle washer and a new axle nut on all MLG's [Modification (c)AC11431], in accordance withe Dowty Aerospace Service Bulletin 200–32–137, dated November 6, 1990.

Note: British Aerospace Service Bulletin ATP–32–28, dated November 6, 1990, references the Dowty Aerospace Service Bulletin for modification instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–7082 Filed 3–25–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–57–AD]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which would require the installation of four rivets in the shear plate on Frame Station 20320 at Stringer 59. This proposal is prompted by reports that, during production, the rivets which attach the flange of the shear plate to Frame Station 20320 were not installed. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

DATES: Comments must be received no later than May 14, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–57–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–57–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 Mark 0100 series airplanes. There has been a recent report that, during production, the rivets which attach the flange of the shear plate to Frame Station 20320 were not installed. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

Fokker has issued Service Bulletin F100–53–048, dated November 29, 1990, which describes procedures for the installation of four rivets in the shear plate on Frame Station 20320 at Stringer 59. The RLD has classified this service bulletin as mandatory and has issued Airworthiness Directive BLA 90–141 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require the installation of four rivets in the shear plate on Frame Station 20320 at Stringer 59, in accordance with the service bulletin previously described.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 391.3 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 Mark 0100 series airplanes, Serial Numbers 11268 through 11273, 11276, 11278, and 11280, certificated in any category. Compliance is required prior to the accumulation of 6,000 landings or 3 years since new, whichever occurs first, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Install four rivets in the shear plate on Frame Station 20320 at Stringer 59, in accordance with Fokker Service Bulletin F100-53-048, dated November 29, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-7079 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-43-AD]

Airworthiness Directives; McDonnell Douglas Corporation Model DC-3 Series Airplanes, Including Those Modified for Turbo-Propeller Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-3 series airplanes, which currently requires certain inspections of the wings, and repair and/or modification, as necessary. This action would revise the inspection procedure, require modification, and add additional models to the applicability. This action is prompted by an in-flight wing separation. This condition, if not corrected, could compromise the structural integrity of the airplane.

DATES: Comments must be received no later than May 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM 43-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-43-AD." This post card will be date/time stamped and returned to the commenter.

Discussion

On August 21, 1969, the FAA issued AD 69-15-04, Amendment 39-799 (34 FR

12159), as revised by Amendment 39–861 (issued October 8, 1969), and Amendment 39–1361 (issued February 26, 1972), applicable to McDonnell Douglas Model DC–3 series airplanes, to require repetitive inspections, repair, and/or optional modifications of the wings. That action was prompted by cracks discovered in the lower wing skins at stations 94.250 and 127.750. This condition was believed to have contributed to three in-flight wing separations.

Since issuance of that AD, another incident of in-flight wing separation involving a Model DC–3 series airplane has occurred. Separation of the wing was apparently the result of cracks which had initiated in the lower center wing skin inboard of the outer center wing attachment near wing station 127. The FAA has determined that, since these cracks may have been missed during the inspections currently required by AD 69–15–04, the inspection requirements of that AD may be inadequate to identify cracking and crack growth in a timely manner. Failure to detect and correct cracks in the wing skin and structure could compromise the structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas Service Rework Drawings No. SR03578003, dated April 6, 1988; No. SR03578001, dated March 11, 1988; No. SR03578002, Revision A, dated Septepber 26, 1988; and No. SR03548001, Revision A, dated March 7, 1989; which describe procedures for structural inspection and modification of the wings on Model DC–3 series airplanes. These procedures are a combination of visual and X-ray inspections to be performed until wing skin doublers are installed, at which time only visual inspections are necessary at 2,000 hour intervals.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 69–15–04 with a new AD that would require visual and X-ray inspections of all Model DC–3 series airplanes for evidence of wing cracking, and would revise the inspection procedures, in accordance with the service information previously described. As was the case in the existing AD, the proposed requirements would vary, depending upon whether the airplane's wings had been modified previously with aluminum doublers as specified in McDonnell Douglas Service Bulletin 229 (any revision) or McDonnell Douglas Service Bulletin 263 (any revision through Revision 8, dated December 15, 1971).

In addition, this proposal would require the installation of the currently optional modification (installation of wing skin doublers), and would add additional affected models to the applicability.

There are approximately 2,000 Model DC–3 series airplanes of the affected design in the worldwide fleet. It is estimated that 610 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required initial actions, and that the average labor cost would be $45 per manhour. The cost for required parts is estimated to be $1,000 per airplane. Follow-on actions would require approximately 50 manhours per airplane at $45 per manhour to accomplish the required inspections. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,727,500 for the first year, or $7,750 per airplane; and $1,372,500 for each year thereafter, or $2,250 per airplane.

These figures are based on an assumption that no airplane has been modified previously in accordance with the requirements proposed in this action.

According to FAA registration records, the mean number of Model DC–3 airplanes registered per owner is about 1.6. Over half of the owners have only one airplane, and the largest number currently operating in a single fleet is 12. There is no easily-available and accurate source of data on the types of businesses in which current U.S. Model DC–3 operators are engaged nor the total number of aircraft of all types that they operate. However, many Model DC–3's are known to be operated by for-hire carriers, especially unscheduled cargo carriers; such use in unscheduled for-hire carriage has been employed here for Regulatory Flexibility Act (RFA) determination purposes.

For air carriers, the FAA defines a "small entity" as one with 9 aircraft (any type) or less, and its criterion for a "significant impact" is at least $3,700 per year for an unscheduled carrier and $51,800 per year for a scheduled carrier operating aircraft of fewer than 60 seats, such as a Model DC–3.

The estimated $7,750 initial modification expenditure that would be required by the proposed AD for each one Model DC–3 converts at 10% (the 10% discount factor required by the Office of Management and Budget for reconciling non-inflation-adjusted future and present expenditure) to an annual equivalent of over $3,700 per year, unless it is considered to apply to a planning period of approximately 2½ years or more. It is thus conceivable that even a single airplane could generate significant costs for a small operator, in terms of the RFA, if the airplane had no economic use (and thus no sale value for future operation) beyond a 2½ year period after the modification, during which there would not have been enough use of the airplane to bring into effect fully or partially offsetting savings from the proposed reduced reinspection requirements.

However, there would seem to be a low likelihood of such an extreme end-of-life-cycle scenario for Model DC–3's belonging to a substantial number of small operators, and reinspection cost savings may be projected to completely offset initial expenditures within realistic future lifetimes for existing Model DC–3's (if not in current operators' fleets, then in others to which they might be sold). Savings may be projected to completely offset initial expenditure within a nine-year future period even if the assumed average annual utilization of 667 hours were reduced to 333. Such a period would have added $9 \times 333 = 2{,}997$ additional hours to the airframe, not an unrealistic increment considering the demonstrated longevity of this type.

Therefore, it is concluded that there is unlikely to be a significant negative economic impact on a substantial number of small entities stemming from the combined effects of the mandatory modification and relaxed inspection provisions of the proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 69-15-04, Amendment 39-799 (34 FR 12159), as revised by Amendment 39-861 and Amendment 39-1361, with the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DST, Super DC-3, DC-3, DC-3A, DC-3B, DC-3C, and DC-3D series airplanes; all military versions, C-41, C-41A, C-47, C-47A, C-47B, C-48, C-48A, C-49, C-49A, C-49B, C-49C, C-49D, C-49J, C-49K, C-50, C-50A, C-50B, C-50C, C-50D, C-51, C-52, C-52B, C-52C, C-53, C-53B, C-53C, C-53D, C-68, C-117A, C-117D, and R4D series airplanes; including those modified for turbo-propeller power; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the wings, accomplish the following:

A. For airplanes not modified with the repair or preventive doublers at both wing stations, 94.250 and 127.750, in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988;

1. Within 900 hours time-in-service after performing the last inspection in accordance with AD 69-15-04, Amendment 39-1361, or one year after the effective date of this AD, whichever occurs first, inspect the wing in accordance with McDonnell Douglas Service Rework Drawing SR03578001, dated March 11, 1988; or McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes, using the visual and X-ray techniques as specified. Modify the airplane to incorporate an access hole, in accordance with McDonnell Douglas Service Rework Drawing SR03548001, Revision A, dated March 7, 1989.

Note: Airplanes previously modified to incorporate an access hole do not have to be remodified if visibility and access can be obtained.

2. Within 2,000 hours time-in-service or two years after the effective date of this AD, whichever occurs first, modify the wings in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

B. For airplanes modified to incorporate the repair or preventive doublers at both wing stations 94.250 and 127.750 in accordance with McDonnell Douglas Service Bulletin 229, any revision; or McDonnell Douglas Service Bulletin 263, any revision through Revision 8, dated December 15, 1971; or McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988: Within 2,000 hours time-in-service after the last inspection in accordance with AD 69-15-04, Amendment 39-1361, and thereafter at intervals not to exceed 2,000 hours, inspect the wing using the visual method specified in McDonnell Douglas Service Rework Drawing SR03578001, dated March 11, 1988; and McDonnell Douglas Service Rework Drawing SR03578002, Revision A, dated September 26, 1988; for the applicable airplanes.

C. Cracked structure detected during the inspections required by paragraphs A. or B. of this AD must be repaired or replaced prior to further flight, in accordance with McDonnell Douglas Service Rework Drawing SR03578003, dated April 6, 1988.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. An alternative method of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on March 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-7083 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-52]

Proposed Alteration of VCR Federal Airway V-263; New Mexico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend VOR Federal Airway V-263 between Albuquerque, NM, and Corona, NM. This airway extension would provide additional routing from Albuquerque to southeastern New Mexico. An operational advantage would be realized by air traffic control by using this additional airway for departures from Albuquerque. This action would improve the flow traffic in the Albuquerque terminal area.

DATES: Comments must be received on or before May 10, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 90-ASW-52, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supports the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-52." The postcard will be date/time stamped and returned to the commenter. All communications

received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend VOR Federal Airway V–263 from Albuquerque, NM, via a south dogleg to Corona, NM. Airspace system users would benefit from the charter information describing this airway. An air traffic control operational advantage would be realized by using the proposed airway as an additional departure route via a dogleg to the south of albuquerque. This action would improve the flow of traffic in that area. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–263 [Amended]

By removing the words "From Albuquerque, NM, via" and substituting the words "From Corona, NM; INT Corona 278 °T (265 °M) and Albuquerque, NM, 160 °T (147 °M) radials; Albuquerque;"

Issued in Washington, D.C., on March 14, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–7077 Filed 3–25–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 240

[DoD Instruction 1342.cc]

Criteria and Procedures for Providing Assistance to Local Educational Agencies

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule implements the DoD Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860). The rule is necessary to establish criteria for the Secretary of Defense to provide financial assistance to local educational agencies that are heavily impacted by the military presence. The FY91 DoD Appropriations Act provides $10 million for this purpose.

DATES: Written comments on this proposed rule must be received by April 25, 1991.

ADDRESSES: Forward comments to: Deputy Assistant Secretary of Defense, (Personnel Support, Families & Education), room 3E784, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, telephone (703) 325–8162 or 325–8164.

List of Subjects in 32 CFR Part 240

Elementary and secondary education, Federally affected areas, Grant programs—education.

Accordingly, title 32, chapter I, subchapter M is proposed to be amended to add part 240 to read as follows:

PART 240—CRITERIA AND PROCEDURES FOR PROVIDING ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

Sec.

Authority: Department of Defense Appropriations Act, 1991, Title II (Pub. L. 101–511, 104 Stat. 1860); 10 U.S.C. 113(d).

§ 240.1 Purpose.

This part: (a) Establishes policies and prescribes procedures for the Department of Defense (DoD) to provide financial assistance to local educational agencies (LEAs) that are heavily impacted by the military presence.

(b) Implements the Department of Defense Appropriations Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860).

§ 240.2 Applicability and scope.

This part applies to: (a) The Office of the Secretary of Defense (OSD).

(b) Schools operated by LEAs providing free public education to dependent children of members of the Armed Forces or civilian DoD personnel who reside on Federal property.

§ 240.3 Policy.

(a) During Fiscal Year 1991, DoD shall obligate $10,000,000 to assist LEAs that meet criteria listed in paragraph (c) of this section. Of this $10,000,000, $886,000 shall be provided to the Killeen, Texas, Independent School District and $167,000 shall be provided to the

Copperas Cove, Texas, Independent School District. The remaining $6,947,000 shall be utilized only for the purpose of providing assistance to eligible LEAs that operate schools that provide free public education to dependent children of members of the Armed Forces or civilian DoD personnel who, while in attendance at these schools, reside on Federal property and, who without the addition of such assistance, are unable to provide a level of education for such dependents equivalent to the comparable level of education provided within the State in which such dependents reside.

(b) OSD shall consult with the Office of the Secretary of Education prior to providing financial assistance to LEAs.

(c) To be eligible for financial assistance:

(1) The LEA must be unable, without the addition of such assistance, to provide a level of education for such students equivalent to the comparable level of education provided within the State in which such students reside (as determined by comparable student data).

(2) The LEA has in school year 1990–91 an average daily attendance (ADA) of military section 3(a) or 3(b) students or a combination of military section 3(a) and 3(b) students that is not less than 35 percent of the LEA's total ADA. At least two students attending the LEA must be the dependents of members of the Armed Forces or of civilian DoD personnel. (For the purposes of this section, DoD will rely on data from the U.S. Department of Education (ED).)

(3) For the prior and current fiscal years, the LEA has applied for and received, or will receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid program.

(4) The eligibility of the LEA under State law for State aid for free public education and the amount of that aid is no different than the eligibility and amounts received by LEAs without military dependent students.

(5) The LEA files with the Assistant Secretary of Defense (Force Management and Personnel) a letter of application (see appendix A to this part) along with one original and two copies of table 8–3 and table 9 from the Impact Aid Application for ED. The application must also include a copy of an independently audited financial report of the applicant LEA for the second preceding fiscal year.

(d) Eligible LEAs will receive financial assistance only on behalf of those students who are dependent children of military personnel who reside on Federal property while in attendance at a school of the applicant LEA.

(e) Applications for financial assistance under this part must be received no later than May 31, 1991.

(f) The amount of assistance (the DoD contribution) for eligible LEAs may not exceed the amount derived from the following formula:

(1) Of the $10,000,000 available, $886,000 shall be provided to the Killeen, Texas, Independent School District and $167,000 shall be provided to the Copperas Cove, Texas, Independent School District. Of the $8,947,000 remaining, $6,531,310 shall be obligated to those eligible LEAs whose per pupil expenditure (PPE) for the second preceding fiscal year was less than the average PPE in the State for the second preceding fiscal year, while $2,415,690 shall be obligated to those eligible LEAs whose PPE for the second preceding fiscal year was equal to or greater than the average PPE in the State for the second preceding fiscal year. (For the purposes of this section, DoD will rely on data from ED.) For those eligible LEAs whose average PPE for the second preceding fiscal year was less than the average PPE in the State for the second preceding fiscal year, the LEA shall receive an amount equal to the LEA's military section 3(a) ADA for school year 1990–91, multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding fiscal year was less than the average PPE in the State for the second preceding fiscal year ($6,531,310), divided by the sum of the ADAs for school year 1990–91 of military section 3(a) students of these same eligible LEAs. For those eligible LEAs whose average PPE for the second preceding fiscal year was equal to or greater than the average PPE in the State for the second preceding fiscal year, the LEA shall receive an amount equal to the LEA's military section 3(a) ADA for school year 1990–91, multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding fiscal year was equal to or greater than the average PPE in the State for the second preceding fiscal year ($2,415,690), divided by the sum of the ADAs for school year 1990–91 of military section 3(a) students of these same eligible LEAs. The sum of ADAs for school year 1990–91 for the military section 3(a) students in Killeen, Texas, Independent School District and the Copperas, Texas, Independent School District shall be deducted from the sum of the ADAs for school year 1990–91 for the military section 3(a) students of all eligible LEAs and shall not be used in calculating the DoD contribution.

(2) LEAs that have been identified in the Department of Defense Appropriation Act, 1991, title II, shall receive the specified amount, but shall not be eligible for additional funding under paragraph (f)(1) of this section.

(3) The Assistant Secretary of Defense (Force Management and Personnel) will calculate the proposed contribution.

(g) The contribution may be used on behalf of all students within the LEA at the discretion of the appropriate officials within the LEA.

§ 240.4 Definitions.

Applicant. Any LEA whose ADA for military section 3(a) and section 3(b) students equals at least 35 percent of its total ADA and that submits a letter of application to DoD, files an application for financial assistance and has received or will receive funds under section 3 of the Impact Aid program, and submits documents and forms called for in this part.

Current expenditures. Expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, debt service, or any expenditures made from funds under chapter 1 and 2 of the title I of the Elementary and Secondary Education Act of 1965. *See* amended definition of "current expenditures" in 34 CFR 222.3, and section 2021 of the Public Law 100–297, the Hawkins-Stafford Elementary and Secondary Education Amendments of 1988.

DoD contribution. The amount of financial assistance an applicant will receive under the provisions of the Department of Defense Appropriation Act, 1991, title II (Pub. L. 101–511, 104 Stat. 1860), and § 240.3(f).

Federal property. Real property that, because of Federal law, agreement or policy, is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

Local educational agency (LEA). A public organization (usually a school district) that has the authority to operate public schools within the limits of the applicable State law.

Military Personnel. A person who is a member of the Armed Forces serving on active duty.

Military 3(a) Student. A child who attends the school(s) of an LEA that provides free public education and who,

while in attendance at such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101 of title 10, United States Code).

Military 3(b) Student. A child who attends schools of an LEA that provides a free public education and who, while in attendance at such school(s), has a parent who is on active duty in the Armed Forces (as defined in section 101 of title 10, United States Code) but does not reside on Federal property.

Per pupil expenditure (PPE). The average current expenditure on behalf of an individual student.

§ 240.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) shall:

(1) Ensure the implementation of these policies and procedures and;

(2) Provide assistance as required to potentially eligible LEAs to meet the requirements of this part.

(b) The General Counsel, DOD, shall provide legal advice for the implementation of this part.

§ 240.6 Procedures.

(a) An applicant requesting assistance under the provisions of the criteria for fiscal year 1991 shall submit a letter of application (See sample at appendix A to this part), with one original and two copies of table 8–3 and table 9 from the Impact Aid Application for ED and a copy of an independently audited financial report of the applicant LEA for the second preceding fiscal year, requesting a contribution and assuring the Assistant Secretary of Defense (Force Management and Personnel) that the LEA has applied for and has received or will receive all financial assistance from other sources for which it is qualified. The Letter of Application shall be submitted ot the following address: Assistant Secretary of Defense, (Force Management and Personnel), Washington, DC 20301–4000.

(b) The applicant shall file a copy of the Letter of Application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to DoD at the address in paragraph (a) of this section by June 15, 1991. Such comments will be considered when applications are reviewed by OSD.

(c) The application and all required supporting information must reach the Assistant Secretary of Defense (Force Management and Personnel) no later than May 31, 1991.

Appendix A to Part 240—Sample Letter of Application For Financial Assistance

Assistant Secretary of Defense, (Force Management and Personnel), Washington, DC 20301–4000.

Dear Mr. Assistant Secretary: Pursuant to the Department of Defense Appropriations Act, 1991, title II, the [Name of the LEA] requests financial assistance for the LEA for SY 1990–91.

We certify that the LEA has applied for financial assistance from all sources, including the State of [Name]. We understand that funds available for this purpose will be paid on a pre-pupil basis for military section 3(a) students only. Enclosed find an original and two copies of Table 8–3 and 9 from the Impact Aid Application for ED and a copy of our independent audit "[Title]" prepared by [Name of firm or agency].

We have submitted a complete and timely application for section 3 Impact Aid assistance to the Secretary of Education. A copy of this letter with the above supporting information is being submitted to the SEA.

Sincerely,

[Authorized LEA Official].

Dated: March 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–6943 Filed 3–25–91; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–60

Freedom of Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Office of Administration, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to revise its regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552 (Pub. L. 90–23). This Act codified Public Law 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.). These regulations also implement Public Law 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Public Law 99–570, the Freedom of Information Reform Act of 1986; and Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987.

The proposed revisions will incorporate predisclosure notification procedures for confidential commercial information. These procedures were published as a proposed rule May 19, 1988. The proposed revision will also:

(a) Update organizational references;

(b) Clarify the definition of available records to include electronic records;

(c) Revise fees for manual searches by clerical staff from $9 to $10 per hour or fraction of an hour and for manual searches by professional staff from $18 to $20 per hour or fraction of an hour, to more accurately reflect the full cost of searches;

(d) Clarify GSA policy with regard to: (1) Reconstructing records and providing incomplete records; (2) explaining compelling reasons for denial of access to records; (3) requiring assurance of payment;

(e) Provide instructions on submission of FOIA requests via FAX and fee payment by credit card; and

(f) Extend the time limit for appeal within GSA from 30 to 120 days.

DATES: Comments must be received on or before April 25, 1991.

ADDRESSES: Comments should be sent to Information Collection Management Branch, General Services Administration, 18th and F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mary Cunningham, GSA Freedom of Information Act (FOIA) Officer (202–501–2691).

SUPPLEMENTARY INFORMATION: Two comments were received regarding predisclosure notification procedures for confidential commercial information. The first comment objected to naming January 1, 1988, as the date after which submitters must designate confidential commercial information as such, since this predated the proposed rule. However, January 1, 1988, is the date cited in Executive Order 12600 that this rule implements. The second comment objected to the written notification procedures, saying that the delays involved would cause GSA to routinely violate time limits established in the Freedom of Information Act. In response to this comment, GSA has revised the procedures to allow telephone notification of submitters.

This regulation does not meet the criteria for a major rule as contained in Executive Order 12291, Federal Regulation. It will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effect on the economy.

The Administrator certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as

they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 41 CFR Part 105–60

Freedom of information.

Accordingly, 41 CFR part 105–60 is revised to read as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1959, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90–23, as amended by Pub. L. 93–502 and Pub. L. 99–570).

§105–60.000 Scope of part.

This part sets forth policies and procedures of the General Services Administration (GSA) regarding public access to records documenting:

(a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability.

(b) Agency final opinions and orders, including policy statements and staff manuals;

(c) Operational and other appropriate agency records; and

(d) Agency proceedings.

This part also covers exemptions from disclosure of these records; procedures for the public to use to inspect or obtain copies of GSA records; and the service of a subpoena or other legal demand for records or access to records.

Subpart 105–60.1—General Provisions

§105–60.101 Purpose.

Part 105–60 implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552 (Pub. L. 90–23, which codified Public Law 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.)). These regulations also implement Public Law 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Public Law 99–570, the Freedom of Information Reform Act of 1986; and Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987. This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA.

§ 105–60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA that come within the scope of 5 U.S.C. 552.

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

The policies of GSA with regard to the availability of records to the public are:

(a) GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will disclose information in any existing GSA record, with noted exceptions, regardless of the form or format of the record. For example, records maintained in an electronic form, as part of a data base, will be provided on request using existing programming. A requester may not, however, require production in a particular format.

(b) The person making the request does not need to demonstrate his or her interest in the records or justify the request.

(c) The FOIA does not give the public the right to demand that GSA compile a record that does not already exist. For example, FOIA does not require GSA to compile information from several sources to create a new record or develop a new computer program to extract requested records. However, GSA will compile records when doing so is not costly or burdensome.

(d) Similarly, FOIA does not require GSA to reconstruct records that have been destroyed in compliance with disposition schedules approved by the Archivist of the United States. However, GSA will not destroy records after any member of the public has requested access to them, and will process the request, even if destruction would otherwise be authorized.

(e) If the record requested is not complete at the time of the request, GSA may, at its discretion, inform the requester that the complete record will be provided when it is available, with no additional request required, if it is not exempt from disclosure.

(f) Requests must be addressed to the office designated in § 105–60.402–1.

(g) Fees for locating and duplicating records are listed in § 105–60.305–10.

§ 105–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA as outlined in subpart 105–60.5 of this part. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so; i.e., disclosure will likely cause harm to a Governmental or private interest. In the absence of a compelling reason, GSA will disclose a record even if it otherwise is subject to exemption. GSA will cite the compelling reason(s) to requesters when any record is denied under FOIA.

§ 105-60.104 Records of other agencies.

If GSA receives a request for access to records that are known to be the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. For example, GSA will refer requests to the appropriate agency in cases in which GSA does not have sufficient knowledge of the action or matter that is the subject of the requested records to determine whether the records must be released or withheld under one of the exemptions listed in subpart 105-60.5 of this part. In other cases, when GSA does not have the requested records, the agency will attempt to determine whether the requested records exist at another agency and, if possible, will forward the request to that agency. GSA will inform the requester that GSA has forwarded the request to the responsible agency.

§ 105-60.105 Inconsistent directives of GSA superseded.

Any policies and procedures in any GSA directive that are inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register

§ 105-60.201 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), GSA publishes in the **Federal Register**, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA; and

(e) Each amendment, revision, or repeal of the materials described in § 105-62.201.

§ 105-60.202 Published materials available for sale to the public.

Substantive rules of general applicability adopted by GSA as authorized by law which this agency publishes in the **Federal Register** and which are available for sale to the public are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5), the Federal Acquisition Regulation (48 CFR Ch. 1), the Federal Property Management Regulations (41 CFR Ch. 101), the Federal Travel Regulation (41 CFR Ch. 301-304), and the Federal Information Resources Management Regulation (41 CFR Ch. 201). These regulations are available for sale by the Superintendent of Documents in—

(a) Daily **Federal Register** form; and

(b) Code of Federal Regulations form, at prices established by the Government Printing Office.

Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105-60.301 General.

GSA makes available for public inspection and copying the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105-60.302 and an Index of those materials as described in § 105-60.304, at convenient locations and times. Central Office materials are located in Washington, DC; some are also available at GSA regional offices. Each regional office has the materials for its region. All locations provide a designated space for inspection and copying of documents. Reasonable copying services areprovided at the fees specified in § 105-60.305.

§ 105-60.302 Available materials.

GSA materials available under subpart 105-60.3 of this part are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements and policy and interpretations which have been adopted by GSA and are not published in the **Federal Register.**

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 105-60.303 Rules for public inspection and copying.

(a) *Locations.* Selected areas containing the materials available for public inspection and copying, described in § 105-60.302, are located in the following places:

Central Office (GSA Headquarters). Washington, DC. Telephone: 202-501-0788
Library (Room 1033), General Services Administration, 18th and F Streets NW., Washington, DC 20405

Region 1 (Comprised of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). Telephone: 617-565-8100
Business Service Center, General Services Administration (2ADB-1), Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222

Region 2 (Comprised of the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands). Telephone: 212-264-1234
Business Service Center, General Services Administration (2ADB), 26 Federal Plaza, New York, NY 10278

Region 3 (Comprised of the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, excluding the Washington, DC metropolitan area). Telephone: 215-597-9613
Business Service Center, General Services Administration (3ADB), Ninth and Market Streets, Room 5151, Philadelphia, PA 19107

Region 4 (Comprised of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). Telephone: 404-331-5103
Business Service Center, General Services Administration (4ADB), Richard B. Russell Federal Building U.S. Courthouse, 75 Spring Street, SW., room 318, Atlanta, GA 30303

Region 5 (Comprised of the States of Illinois, Indiana, Ohio, Minnesota, Michigan, and Wisconsin). Telephone: 312-353-5383
Business Service Center, General Services Administration (5ADB), 230 South Dearborn Street, Chicago, IL 60604

Region 6 (Comprised of the States of Iowa, Kansas, Missouri, and Nabraska). Telephone: 816-926-7203.
Business Service Center, General Services Administration (6ADB), 1500 East Bannister Road, Kansas City, MO 64131

Region 7 (Comprised of the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma). Telephone: 817-334-3284
Business Service Center, General Services Administration (7ADB), 819 Taylor Street, room 11A05, Fort Worth, TX 76102

Region 8 (Comprised of the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming). Telephone 303-236-7408
Business Service Center, General Services Administration (7ADB-8), Building 41, Denver Federal Center, room 145, Denver, CO 80225

Region 9 (Comprised of the States of Hawaii, California, Nevada, Arizona, Guam, and Trust Territory of the Pacific). Telephone 415-744-5050
Business Service Center, General Services Administration (9ADB), 525 Market Street, San Francisco, CA 94105

Region 10 (Comprised of the States of Alaska, Idaho, Oregon, and Washington). Telephone: 206–931–7957
Business Service Center, General Services Administration (9ADB–10) GSA Center, 15th and C Streets, SW., room 2413, Auburn, WA 98002
National Capital Region (Comprised of the District of Columbia and the surrounding metropolitan area). Telephone: 202–708–5804
Business Service Center, General Services Administration, (WADB), Seventh and D Street, SW., room 1050, Washington, DC 20407

(b) *Time.* The reading rooms or selected areas will be open to the public during the business hours of the GSA office where they are located.

(c) *Reading room and selected area rules*— (1) *Handling of materials.* The removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book or other article that could contain GSA informational materials.

(2) *Reproduction services.* The GSA Central Office Library or the Regional Business Service Centers will furnish reasonable copying and reproduction services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Index.

GSA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing indentifying information for the public regarding any matter described in § 105–60.302.

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of this part: (a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a Government agency to set the level of fees for particular types of records, as opposed to a statute that generally discusses such fees. Fees are required by statute to:

(1) Make Government information conveniently available to the public and to private sector organizations;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term *direct costs* means those expenditures which GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing and redacting) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Overhead expenses such as costs of space, and heating or lighting the facility where the records are stored are not included in the direct costs.

(c) The term *search* includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searches will not be undertaken when it would be more efficient to duplicate the entire document. "Search" for responsive material is not the same as "review" of a record to determine whether it is exempt from disclosure in whole or in part (see paragraph (e) of this section). Searches may be done manually or by computer using existing programming.

(d) The term *duplication* means the process of making a copy of a document in response to a FOLA request. Copies can take the form of paper, microform, audiovisual materials, or magnetic tapes or disks. GSA will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(e) The term *review* means the process of examining documents located in response to a request to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–6.

(f) The term *commercial-use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. GSA will determine whether a requester properly belongs in this category by determining how the requester will use the documents.

(g) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* means an institution that is not operated on a *commercial* basis as that term is used in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by it.

§ 105–60.305–2 Scope of section.

Sections 105–60.305–3 through 105–60.305–13 set forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105–60.305–3 GSA records available without charge.

GSA records available to the public are displayed in the Business Service Center for each GSA region. The address and phone number of the Business Service Centers are listed in § 105–60.303. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105–60.305–4 GSA records available at a fee.

GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester at fees shown in § 105–60.305–10. Waivers of these fees are available under the conditions described in § 105–60.305–13. GSA will agree to:

(a) Show the originals to the requester;

(b) Make one copy available at a fee; or

(c) A combination of these alternatives.

GSA will make copies of voluminous records as quickly as possible. GSA will make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105-60.305-5 Searches.

(a) GSA may charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105-60.305-10:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher, and

(3) Direct costs of the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

(c) GSA may assess fees for search time even if the search proves unsuccessful or if the records located are exempt from disclosure.

§ 105-60.305-6 Reviews.

(a) GSA will charge only commercial-use requesters for review time.

(b) GSA will charge for the time spent in the following activities in determining "review time" subject to applicable fees as provided in § 105-60.305-10:

(1) Time spent in examining a requested record to determine whether any or all of the record is exempt from disclosure, including time spent consulting with submitter of requested information; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(c) GSA will not charge for:

(1) Time spent in resolving issues of law or policy regarding the application of exemptions; or

(2) Review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. GSA will charge for such subsequent review.

§ 105-60.305-7 Assurance of payment.

If fees for search, review, and reproduction will exceed $25 but will be less than $250, the requester must provide written assurance of payment before GSA will process the request. If this assurance is not included in the initial request, GSA will notify the requester that assurance of payment is required before the request is processed. GSA will offer requesters an opportunity to modify the request to reduce the fee.

§ 105-60.305-8 Prepayment of fees.

(a) *Fees over $250.* GSA will require prepayment of fees for search, review, and reproduction which are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. When fees will exceed $250, GSA will notify the requester that is will not start processing a request until payment is received.

(b) *Delinquent payments.* As noted in § 105-60.305-12(d), requesters who are delinquent in paying for previous requests will be required to prepay for any subsequent request. GSA will inform the requester that it will process no additional requests until all fees are paid.

§ 105-60.305-9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence. Payment may also be made by means of Mastercard or Visa. For information concerning payment by credit cards, call 816-926-7551.

§ 105-60.305-10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating as statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) GSA will consider only the following costs in fees charged to requesters of GSA records:

(1) *Review and search fees:*

Manual searches by clerical staff..	$10 per hour or fraction of an hour.
Manual searches and reviews by professional staff in cases in which clerical staff would be unable to locate the requested records..	$20 per hour or fraction of an hour.
Computer searches..	Direct cost to GSA.
Transportation or special handling of records..	Direct cost to GSA.

(2) *Reproduction fees:*

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying.	$0.10 per page.
Pages over 8½ by 14 inches.	Direct cost of reproduction to GSA.
Pages requiring reduction, enlargement, or other special services.	Direct cost of reproduction to GSA.
Reproduction by other than routine electrostatic copying.	Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated as direct costs, in accordance with § 105-60.305-1(b).

(d) GSA will assess fees based on the category of the requester as defined in § 105-60.305-1 (f)-(i); i.e., commercial-use, educational and noncommercial scientific institutions, news media, and all other. The fees listed above apply with the following exceptions:

(1) GSA will not charge the requester if the fee is $10 or less as the cost of collection would be greater than the fee.

(2) Educational noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated.

(i) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be $5. This amount would not be billed under the proceding section.

(ii) A request that results in 250 pages of material. The requester in this case would be charged $15.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (paper copies) of duplication at no cost and 2 hours of search without charge. The term "search time" generally refers to manual search. To apply this term to searches made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the

cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search; i.e., the operator. GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requesters are not entitled to 2 hours of free search time.

(e) *Determining category of requester.* GSA may ask any requester to provide additional information at any time to determine what fee category he or she falls under.

§ 105-60.305-11 Fees for authenticated and attested copies.

The fees set forth in § 105-60.305-10 apply to requests for authenticated and attested copies of GSA records.

§ 105-60.305-12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Aggregating requests.* When the agency reasonably believes that a requester, or group of requesters acting in concert, is attempting to break a request down into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charge accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type made within a 30-day period are made to avoid fees.

(d) *Advance payments.* Whenever a requester is delinquent in paying the fee for a previous request (i.e., within 30 days of the date of the billing), GSA will require the requester to pay the full amount owned plus any applicable interest penalties and administrative costs as provided above or to demonstrate that he or she has, in fact, paid the fee. In such cases, GSA will also require advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When advance payment is required under this section, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of appeals from initial denial plus permissible time extensions) will begin only after GSA has received the fee payments described above.

§ 105-60.305-13 Waiver of fee.

(a) Any request for waiver or reduction of a fee should be included in the initial letter requesting access to GSA records under § 105-60.402-1. The waiver request should explain how disclosure of the information would contribute significantly to public understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a request GSA will consider the following factors:

(1) Whether the subject of the requested records concerns "the operations or activities of the Government." The subject matter of the records must specifically concern identifiable operations or activities of the Federal Government. The connection between the records and the operations or activities must be direct and clear, not remote or attenuated.

(2) Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. In this connection GSA will consider whether the requested information is already in the public domain. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to "public understanding." The focus here must be on the contribution to public understanding rather than personal benefit to be derived by the requester. For purposes of the analysis, the identity and qualifications of the requester should be considered, to determine whether the requester is in a position to contribute to public understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(5) Whether the magnitude of any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) GSA will ask the requester to furnish additional information if the initial request is insufficient to evaluate the merits of the request. GSA will not start processing a request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

Subpart 105-60.4—Described Records

§ 105-60.401 General.

(a) Except for records made available in accordance with subparts 105-60.2 and 105-60.3 of this part, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with subpart 105-60.5. Although the burden of reasonable description of the records rests with the requester, whenever practical GSA will assist requesters to describe records more specifically.

(b) Whenever a request does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 105-60.402-2 will not start until the official identified in § 105-60.402-1 or other responding official receives a request reasonably describing the records.

§ 105-60.402 Procedures for making records available.

Sections 105-60.402-1 and 105-60.402-2 set forth initial procedures for making records available when they are requested.

§ 105-60.402-1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405. Requesters may FAX requests to (202) 501-2727. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105-60.303(a). Requests should include the words "Freedom of Information Act Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 105-60.402-2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105-60.305-8 and 105-60.305-12(d) apply. Failure to include the words "Freedom of Information Act Request" or to submit a request to the official

identified in this section will result in processing delays. A requester who has questions concerning a FOIA request may contact the GSA FOIA Officer, General Services Administration (CAIR), 18th and F Streets NW., Washington, DC 20405, (202) 501–2691.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request, including a fee waiver request, within 10 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, or a denial of a fee waiver request, may appeal that decision within GSA. The requester must direct the appeal to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office.

(b) The GSA FOIA Officer must receive an appeal no later than 120 calendar days after receipt by the requester of the initial denial of access.

(c) The requester must appeal in writing and include a brief statement of the reasons he or she thinks GSA should release the records and enclose copies of the initial request and denial. The appeal letter must include the words "Freedom of Information Act Appeal" on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal. As noted in § 105–60.404, the GSA FOIA Officer may extend this time limit in unusual circumstances.

(d) A requester who has received a denial of an appeal may seek judicial review of GSA's decision in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402–1, 105–60.402–2, and 105–60.403. For purposes of this section, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are described in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, GSA may take more than one extension of time. However, the total extension of time to respond to any single request shall not exceed 10 workdays. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide a written notice to the requester of any extension of time limits.

§ 105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the Government. The term "submitter" includes, but is not limited to, individuals, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* After January 1, 1988, submitters must designate confidential commercial information as such when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotiated procurements, the requirement of Federal Acquisition Regulation 15.407(c)(8) and 52.215–12 (48 CFR 15.407(c)(8) and 52.215–12) also apply.

(d) *Procedural requirements-consultation with the submitter.* (1) If GSA receives a FOIA request for confidential commercial information, it will notify the submitter immediately by telephone and invite an opinion as to whether disclosure will or will not cause substantial competitive harm.

(2) GSA will follow up this telephonic notice promptly in writing before releasing any records unless paragraph (f) of this section applies.

(3) If the submitter has indicated that he or she will object to disclosure, GSA will give the submitter 7 workdays from receipt of the letter to provide GSA with a detailed written explanation of how disclosure of any specified portion of the records would be competitively harmful.

(4) If the submitter verbally states that there is no objection to disclosure, GSA will confirm this fact in writing before disclosing any records.

(5) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in responding to the request due to the need to consult with the submitter.

(6) GSA will review all reasons for nondisclosure before deciding whether the information must be released or should be withheld. If the agency decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter will contain a complete copy of the material to be disclosed or will offer the submitter an opportunity to review the material in one of GSA's offices. If GSA decides not to release the material, it will notify the submitter orally or in writing.

(7) If GSA determines to disclose information over a submitter's objections, GSA will inform the submitter that GSA will delay disclosure for 5 workdays from the estimated date the submitter receives GSA's reply before it releases the information. The decision letter to the requester shall state that GSA will delay disclosure of material it has determined to disclose to allow for the notification of the submitter.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA

will nofity a submitter whenever it receives a FOIA request for such information:

(i) If the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notifiy a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) That GSA believes could reasonably be expected to cause substantial competitive harm if disclosed.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required.* The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) Disclosure is required by an agency rule that—

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such cases, the agency must provide the submitter with written notice of any final administrative decision 5 workdays prior to disclosing the information.

(g) *Lawsuits.* If a FOIA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsbile for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section. If GSA must delete information from a record before disclosing it, this information, and the reasons for withholding it, will be clearly described in the cover letter to the requester or in an attachment.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Privacy Act of 1974 and implementing regulations, part 105–64 of this chapter, or if disclosure would cause no demonstrable harm to any governmental or private interest.

(d) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i):

(1) If the investigation or proceeding involves a possible violation or criminal law, and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of it, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(e) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(f) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

Subpart 105-60.6—Subpoenas or Other Legal Demands for Records

§ 105-60.601 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA should be addressed to the General Counsel, General Services Administration (L), Washington, DC 20405, with respect to GSA Central Office records; to the appropriate Regional Counsel, for records in GSA regional offices; or to the Administrator of the General Services Administration.

(b) The Administrator, the General Counsel, Deputy General Counsel, Associate General Counsels, the Chairman of the Board of Contract Appeals, Inspector General, and with respect to records in a GSA regional office, the Regional Administrator and Regional counsel are the only GSA employees authorized to accept service of a subpoena duces tecum or other legal demand on behalf of GSA.

Dated: February 5, 1991.

Carlene Bawden,

Associate Administrator for Administration.

[FR Doc. 91-7076 Filed 3-25-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. ROS-2, Notice No. 2]

Bridge Worker Safety Rules; Postponement of Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of postponement of public hearing.

SUMMARY: On January 30, 1991, FRA published in the **Federal Register** (56 FR 3434) a Notice of Proposed Rulemaking to establihed safety standards for the protection of workers on railroad bridges. In that Notice, a public hearing was scheduled to take place on March 28, 1991 in order to provide all interested parties an opportunity to present information and express views relating to the proposed bridge worker standards. However, due to unforeseen circumstances, all interested parties cannot be present to provide information on that date. Therefore, FRA is postponing the public hearing on the Notice of Proposed Rulemaking on Bridge Worker Safety Standards originally schedule for March 28, 1991, and rescheduling it for May 1, 1991 at 9:30 a.m.

DATES: A public hearing scheduled to be held at 9:30 a.m. on March 28, 1991, is postponed and is rescheduled to be held on May 1, 1991, at 9:30 a.m. in room 2230 of the Nassif Building.

ADDRESSES: The public hearing will take place in Room 2230 of the Nassif Building, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Christine Beyer, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0635.

Issued in Washington, DC, on March 21, 1991.

William J. Watt,

Acting Administrator.

[FR Doc. 91-7113 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 64]

RIN 2127-AE01

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Treadwear Test Course

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) contain detailed testing procedures for generating consumer information about the treadwear, traction, and temperature resistance of passenger car tires. The treadwear grading procedures specify the test course along which treadwear convoys must travel to ensure uniformity among test grades. This notice proposes amending the test course to account for potentially unsafe traffic patterns along the test route. The agency tentatively concludes that the course change would not compromise the reliability of the treadwear grades.

DATES: Comments on this notice must be received on or before May 10, 1991.

Effective Date: The amendments would become effective 90 days after publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 25; Notice 64 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading Standards (UTQGS) require manufacturers or brand name owners of passenger car tires to provide consumers with information about their tires' performance relative to other tires in terms of treadwear, traction, and temperature resistance. (49 CFR 575.104). The purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers choose among tires based on their relative tread life.

The UTQGS sets forth extensive requirements in 49 CFR 574.104(e) for convoys used to generate treadwear data. Treadwear performance is evaluated on a specific roadway course approximately 400 miles in length in the vicinity of Goodfellow Air Force Base (AFB) in San Angelo, Texas. Test convoys run for NHTSA's compliance testing and by regulated entities must travel on the designated test course, which is designed to produce treadwear rates that are generally representative of those encountered by public use. After an 800 mile break-in period (two circuits), each treadwear convoy must be run for an additional 6400 miles (16 circuits).

Appendix A to the UTQGS specifies the exact route on which a treadwear convoy must travel. Convoys originating

at Goodfellow AFB, upon exiting the base via Ft. McKavitt Road, make a right turn at the intersection with Paint Rock Road (FM388) and begin the test course by driving east for 1.8 miles to the junction with Loop Road 306. There, they turn south to continue the Southern Loop portion of the test course. These convoys eventually complete their Nothwestern Loop, and the entire 400 mile test circuit, by traveling west via the same 1.8 mile stretch of FM388 to the intersection with Ft. McKavitt Road, where they leave the test circuit by making a left turn and proceed to the base.

For convoys originating at contracting facilities adjoining the test course but outside the base, following the same 400 mile circuit entails making a U-turn on FM388 at the intersection with Ft. McKavitt Road. Until recently, this was satisfactory because wide shoulders along FM388 permitted making the U-turn easily and safely. However, recent road improvements at the base's entrance have converted the wide shoulders to extra traffic lanes and added a new center lane. So, instead of first pulling of to the shoulder, these convoys must not attempt a much tighter U-turn from a busier center lane. The maneuver often involves backing up in the intersection, creating additional congestion and confusion. Because most convoys originate outside the base and must make such a U-turn, this situation also creates s significant safety problem.

The agency is proposing to subsitute a similar 3.6 mile portion to the test course at a more convenient location to help the adversely affected convoys avoid the troublesome U-turn. In particular, appendix A would be amended to add an alternate 3.6 miles adjoining the test course's Eastern Loop, as follows: At the intersection of FM2334 and Paint Rock Road (FM388), qualified convoys returning North on FM2334 would leave the common test course by continuing past this intersection for 1.8 miles to Veribest Cotton Gin. At the entrance to the gin, these convoys would make a U-turn and then drive back to the intersection where they would turn right on FM388 and rejoin the common test course (except for omitting the other alternative 3.6 miles on FM 388). The proposed alternate roadway is straight, is lightly traveled, and has good sight distance. Its asphalt and gravel surface duplicates the surface of the section it would replace for certain convoys. Such alternate routing of convoys that do not originate at the base would assure that all convoys travel the required distance of 400 miles for each test circuit but without disrupting traffic at a busy intersection. The agency welcomes comments about the need for and merits of this proposal.

The agency has tentatively determined that differences, if any, in the wear characteristics between the two alternate portions of the test course should have an insignificant effect on treadwear grades. Each portion only accounts for 3.6 miles of each 400 miles of travel or 0.9 percent in a 6,400 mile test course. In addition, each convoy would have course monitoring tires (CMTs) that would further account for differences in road conditions between the two alternate 3.6 mile test course segments. Thus, differences in road conditions would be adjusted for by using the ratio of the average wear rate of the CMTs and the base course wear rate as determined for each batch of CMTs when purchased.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has determined that this rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have not change test costs and would only insignificantly change the test procedures. The economic impacts would, therefore, be minimal. The amendments would respond to changing a potentially dangerous traffic condition recently imposed on test convoys.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Tire manufacturers typically would not qualify as small entities. While some UTQGS testing organizations may be small entities, the proposed amendment would not have a significant economic impact on them since test costs would not be affected. Small organizations and governmental jurisdictions which purchase tires would not be affected since the proposal would not affect the cost or treadwear grading of tires.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that it would have no Federalism implication that warrants preparation of a Federalism report.

National Environmental Policy Act

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule would not have any significant impact on the quality of the human environment.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512)

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR 575.104, Uniform Tire Quality Grading Standards would be amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for part 575 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended].

2. In § 575.104, the portions of appendix A addressing the Eastern Loop and Northwestern Loop would be revised to read as follows:

Appendix A–[Amended]

* * * * *

Eastern Loop. From junction of Loop Road 306 and FM 388 (2) make right turn onto FM388 and drive east to junction with FM2334 (13). Turn right onto FM2334 and proceed south across FM765 (14) to junction of FM2334 and US87 (15). For convoys that originate at Goodfellow AFB, make U-turn and return to junction of FM388 and Loop Road 306 (2) by the same route. For convoys that do not originate at Goodfellow AFB, upon reaching junction of FM2334 and US87 (15), make U-Turn and continue north on FM2334 past the intersection with FM388 to Veribest Cotton Gin, a distance of 1.8 miles beyond the intersection. Make U-turn and return to junction of FM2334 and FM388. Turn right onto FM388, proceed west to junction FM388 and Loop Road 306.

Northwestern Loop. From junction of Loop Road 306 and FM388 (2), make right turn onto Loop Road 306. Proceed onto US277, to junction with FM2105 (8). Turn left onto FM2105 and proceed west to junction with US87 (10). Turn right on US87 and proceed northwest to the junction with FM2034 near the town of Water Valley (11). Turn right onto FM2034 and proceed north to Texas 208 (12). Turn right onto Texas 208 and proceed south to junction with FM2105 (9). Turn left onto FM2105 and proceed east to junction with US277 (8). Turn right onto US277 and proceed south onto 306 to junction with 388 (2). For convoys that originate at Goodfellow AFB, turn right onto 388 and proceed to starting point at junction of Ft. McKavitt Road and FM388 (1). For convoys that do not originate at Goodfellow AFB, do not turn right onto FM388 but continue south on Loop Road 306.

* * * * *

3. In appendix A to § 575.104, figure 2 "Key Points Along Treadwear Test Course, Approximate Mileages, and Remarks" would be revised to read as follows:

FIGURE 2—KEY POINTS ALONG TREADWEAR TEST COURSE, APPROX. MILEAGES, AND REMARKS

	Mileages	Remarks
1 Ft. McKavitt Road & FM 388.	0	
2 FM 388 & Loop 306*...	2	Stop.
3 Loop 306 & US 277.....	10	
4 Sonora.....	72	
5 US 277 & FM 189.....	88	
6 FM 189 & Texas 163...	124	
7 Historical Marker (Camp Hudson).	143	U-Turn.
4 Sonora.....	214	
3 Loop 306 & US 277.....	276	
2 FM 388 & Loop 306.....	283	
13 FM 388 & FM 2334†	290	Stop.
14 FM 2334 & FM 765 ...	292	Stop.
15 FM 2334 & US 87.....	295	U-Turn.
14 FM 2334 & FM 765 ...	298	Stop.
13 FM 388 & FM 2334 ...	300	Stop/ Yield/ Blinking Red Light.
2 FM 388 & Loop 306.....	307	Stop/ Yield/ Blinking Red Light.
8 US 277 & FM 2105.....	313	
9 FM 2105 & Texas 208.	317	Stop.
10 FM 2105 & US 87.....	320	Stop.
11 FM 2034 & US 87.....	338	
12 FM 2034 & Texas 208.	362	Yield.
9 FM 2105 & Texas 208.	387	
8 FM 2105 & US 277.....	391	Yield/Stop.
2 FM 388 & Loop 306*...	398	
1 Ft. McKavitt Road & FM 388.	400	
16 Veribest Cotton Gin ...	1.8	U-Turn.

*Convoys not originating at Goodfellow AFB will not traverse the leg of course.

† Convoys not originating at Goodfellow AFB will proceed to 16, Veribest Cotton Gin, make U-Turn and return to 13.

4. In appendix A to § 575.104, Figure 3 would be revised as follows:

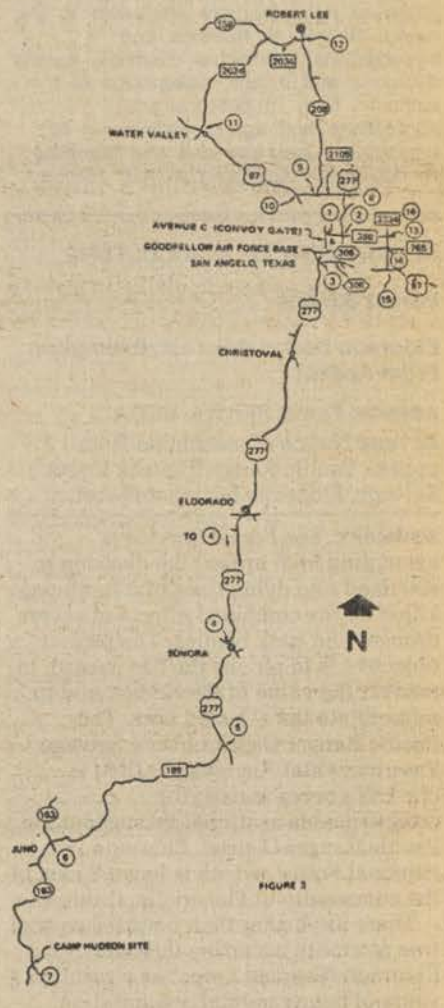

FIGURE 3

Issued on: March 20, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–7022 Filed 3–25–91; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 56, No. 58
Tuesday, March 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eldorado National Forest; Exemption From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Pacific Ranger District Insect Salvage, Eldorado National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objective is to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected area. The Pacific Ranger District Insect Salvage Environmental Assessment (EA) is currently being revised for compartments scattered throughout the Pacific Ranger District, Eldorado National Forest, which is located east of the community of Placerville, California.

There are higher than normal levels of tree mortality occurring throughout the Eldorado National Forest as a result of 4 years of below normal precipitation with a fifth drought year expected. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands, predisposing them to attack by bark beetles. True fir stands above 5000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized, its value to be recovered, and the fire hazard to be reduced.

The Forest Supervisor has determined through preliminary environmental analysis, which included public scoping, that there is good cause to expedite this project. The analysis area is approximately 75,000 acres (gross) with at least 22,000 acres visibly adversely affected at this time. Up to 50 percent or more of the trees in some stands within the analysis area, are dead or dying. The Forest is proposing 4 sales in 1991 using tractor harvest systems. It is estimated that up to 22 million board-feet (MMBF) could be salvaged from this analysis area. The management direction for all the compartments in this proposal is established in the Eldorado National Forest Land and Resource Management Plan, approved by the Regional Forester on January 6, 1989, which includes intensive forest management practices on commercial lands.

There is one-half mile of new road construction proposed with these sales. Approximately 1.5 miles of road reconstruction may occur where necessary to protect resource values. No road construction or harvest activity is proposed within the previously identified roadless areas.

Several pair of spotted owls, ED–9, ED–12, ED–36, ED–50, ED–57, ED–95, ED–96, ED–97, and ED–98 are located in the analysis area and are within the current Spotted Owl Habitat Area (SOHA) network on the Eldorado.

The salvage proposal does not include any harvest within SOHAs. Approximately 7,600 acres of old-exist in the analysis area. Of the 7,600 acres approximately 1,175 acres of old-growth, will be entered under this salvage proposal.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs (which are due to the scattered location of the dead and dying trees). Through timber sales, fuel treatments can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsent—Vandenburg (K–V) funds to restore forest values being affected by extensive tree mortality.

The decision for the analysis area is scheduled to be issued in late March 1991. If projects are delayed because of appeals (delays can be up to 100 days with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects could not be implemented during the normal operating season or during the winter operating season. This would result in a loss of value of the timber due to deterioration. The total estimated value of the standing dead mortality is $2,200,000, of which approximately $550,000 would be returned to counties from 25 percent receipt funds. This loss of timber value would create the potential that the sales would not sell due to the significant harvest costs. In addition, the fire hazard would not be reduced if the dead timber was not removed. Further, there is significant increased public awareness of the significance of the increased insect mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Pacific Ranger District Insect Salvage analysis area on the Pacific Ranger District, Eldorado National Forest. The environmental document being revised will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, at (415) 705–2648, or Jerald N. Hutchins, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667, at (916) 622–5061.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in

forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in an revision of the 1990 Pacific Ranger District Insect Salvage EA. Extensive public involvement and scoping has already occurred and continues in an ongoing effort to keep the public informed. The project files and related maps are available for public review at the Pacific Ranger District, Fresh Pond, California, and in the Forest Supervisor's Office, Placerville, California.

The analysis indicates that up to 22 MMBF, primarily mixed confeir and true fir, valued at up to $2,200,000, have been currently killed by the combined effects of drought and brak beetle attack. Up to 70 percent of the merchantable volume, can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying harvest or not harvesting this timber could result in a loss of up to $550,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in El Dorado, Amador, Placer, and/or Alpine Counties.

Based on the analysis completed thus far, the environmental analysis will document that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed values, visual quality, air quality, recreation, and public safety. No wetlands, wilderness areas, roadless areas, Spotted Owl Habitat Areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources funded with K–V monies. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. In addition, there is significant potential to increase the public's concern related to failure to harvest the insect mortality as soon as possible.

Dated: March 19, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91–7053 Filed 3–25–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–86]

Foreign-Trade Zone 50; Long Beach, CA; Withdrawal of Application for Subzone Status for Todd Pacific Shipyards

Notice is hereby given of the withdrawal of the application submitted by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting special-purpose subzone status for the shipyard of Todd Pacific Shipyards Corporation in Los Angeles. The application was filed on July 20, 1986 (51 FR 28610, 8/8/86).

The withdrawal is requested by the applicant because of changed circumstances.

The case has been withdrawn without prejudice, and FTZ Board Docket 27–86 is closed.

Dated: March 19, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7026 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 12–91]

Foreign-Trade Zone 93; Raleigh/Durham, NC; Application for Subzone, Mallinckrodt Medical, Inc., Pharmaceutical Manufacturing Facility, Wake County, NC; Correction

In notice document 91–5687 beginning on page 10233 in the issue of Monday, March 11, 1991, make the following correction:

On page 10234, in the second column, the first address listed should read: Port Director's Office, U.S. Customs Service, P.O. Box 80666, Air Cargo Building #1, Raleigh, NC 27623.

Dated: March 19, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7027 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 14–91]

Proposed Foreign-Trade Zone; Klamath County, OR; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Klamath Falls Dock Commission (a public corporation), requesting authority to establish a general-purpose foreign-trade zone at sites in Klamath County, Oregon. The Klamath Falls International Airport has been designated a "Customs user fee port facility" by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formerly filed on March 12, 1991. The applicant is authorized to make the proposal under Oregon Revised Statutes 307.850.

The proposed zone would involve 3 sites (5,000 acres) in the Klamath Falls area. *Site 1*, which the applicant has designated, the Klamath Falls International Airport Area (4,552 acres), covers the airport complex as well as several privately-owned parcels to the northwest of the airport, including the Kingsley Industrial Park, the Southtowne Commercial Center and the Leonard R. Putnam Industrial Tract. *Site 2* is the City-owned College Industrial Park (120 acres) located on Northern Heights Boulevard off U.S. Route 97 in northern Klamath Falls. *Site 3* is the Williamson Business Park (300 acres) located on U.S. Route 97 in Klamath County, some 30 miles north of Klamath Falls. It is owned by Trendwest, Inc.

The application contains evidence of the need for zone services in the Klamath Falls area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as aircraft equipment, apparel, semiconductors and consumer electronics. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Thomas W. Hardy, District Director, U.S. Customs Service, Pacific Region, 511 NW Broadway, Federal Building, Portland, Oregon 97209; and Lt. Colonel Stanley Phernambucq, District Engineer, U.S. Army Engineer District, San Francisco, 211 Main Street, San Francisco, California 94105–1905.

As part of its investigation the examiners committee will hold a public hearing on April 18, 1991, beginning at 2 p.m. in the Klamath Falls City Council Chambers, 500 Klamath Avenue, Klamath Falls, Oregon.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by

phone (202/377–2862) by April 11, 1990. Instead of oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through May 20, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

City Manager's Office,
City Hall,
50 Klamath Avenue,
Klamath Falls, Oregon 97603.

Office of the Executive Secretary,
Foreign-Trade Zones Board,
U.S. Department of Commerce, room 4213,
14th and Pennsylvania Avenue NW.,
Washington, DC 20230.

Dated: March 19, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7028 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers from Colombia; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Court Decision

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of amendment of final determination of sales at less than fair value and antidumping duty order in accordance with court decision.

SUMMARY: On January 18, 1991 the Court of Appeals for the Federal Circuit ("Federal Circuit") issued a mandate ordering the Department of Commerce to implement the October 18, 1990 decision of the Federal Circuit affirming the decision and injunction of the Court of International Trade ("CIT") dated October 19, 1989. *The Association Colombiana De Exportadores De Flores* v. *United States*, Ct. No. 90–1131, –1140. In accordance with the Federal Circuit's mandate, the Department is now amending its final determination to change the "all others" cash deposit rate from 4.4 percent to 3.1 percent *ad valorem* and will instruct Customs to liquidate in accordance with the CIT's decision and injunction.

EFFECTIVE DATE: March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20030, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1990 the Court of Appeals for the Federal Circuit ("Federal Circuit") affirmed the decision and injunction of the Court of International Trade ("CIT") dated October 19, 1989. *The Association Colombiana De Exportadores De Flores* v. *United States*, Ct. No. 90–1131, –1140. The CIT decision requires the Department of Commerce ("the Department" or "Commerce") to assess antidumping duties upon certain entries of fresh cut flowers from Colombia, for which no administrative review was requested, at the judicially-corrected cash deposit rate instead of at the rate entered. *The Association Colombiana De Exportadores De Flores* v. *United States*, 724 F. Supp. 969 (CIT 1989). On January 18, 1991 the Federal Circuit mandated Commerce to implement the CIT decision.

Amendment to Final Determination and Liquidation Instructions

Accordingly, the Department is amending the final determination of sales at less than fair value and antidumping duty order on certain fresh cut flowers from Colombia to change the "all others" cash deposit rate from 4.4 percent to 3.1 percent *ad valorem*. The Department will instruct the Customs Service to proceed with liquidation at the judicially-corrected cash deposit of 3.1 percent of the entries covered by the CIT's injunction which entered during the period 3/19/86–2/28/89 and for which no administrative review was conducted.

Dated: March 18, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–7029 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Proposed Extensions and Revisions of Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of receipt of applications to extend Deep Seabed Mining Exploration Licenses and to revise Incorporated Exploration Plans; Request for comments.

SUMMARY: On November 14 and 20, 1990, Ocean Management, Inc. (OMI), and Ocean Mining Associates (OMA), submitted to the National Oceanic and Atmospheric Administration (NOAA) applications for five-year extensions of Deep Seabed Mining Exploration Licenses, USA–2 and USA–3, respectively, pursuant to sections 105(c)(2) and 107 (a) of the Deep Seabed Hard Mineral Resources Act (DSHMRA, 30 U.S.C. 1401 *et seq.*) and 15 CFR 970.515. OMI and OMA have also proposed related exploration plan modifications. NOAA has determined that these proposals constitute applications for major but not significant revisions to the exploration plans and to the terms, conditions and restrictions (TCRs) of the licenses under 15 CFR 970.513, and is commencing public review procedures prescribed in 15 CFR 970.514(b).

Pursuant to the DSHMRA and 15 CFR part 970, on August 29, 1984, NOAA issued licenses to OMI and OMA to engage in deep seabed mining exploration activities for a period of 10 years in sites located in the Clarion-Clipperton Fracture Zone of the Northeastern Equatorial Pacific Ocean. Since that time, both licensees, subject to the TCRs of their licenses and NOAA's regulatory requirements, have diligently pursued the activities as approved in the exploration plans of their licenses, directed toward application for a commercial permit in 1994.

Both licensees are applying for five-year extensions of their licenses and revisions to their exploration plans based on significantly changed market conditions, pursuant to 15 CFR 970.515. Section 107(a) of the DSHMRA provides that the Administrator shall extend a license, on terms consistent with the Act and regulations, if the licensee has substantially complied with the license and associated exploration plan. Section 105(c)(2) of the DSHMRA authorizes NOAA to approve a license revision upon a finding that the revision will comply with the requirements of the Act and implementing regulations. The applications refer to industry feasibility studies indicating that a downward trend in world metals market prices over the past several years, combined with the production cost of seabed nodule commodities, make commercial exploitation economically impractical in

the near term. In addition to changed market conditions, a substantial amount of license area data has been acquired by the licensees as a result of conflict resolution with third parties. This acquisition has obviated the need for further data collection until the latter years of the exploration license or until the commerical phase. Both licensees have accomplished much of the work scheduled to be done over the ten-year term of their licenses in their first six years of exploration activities.

USA–2, Issued to Ocean Management, Inc.

OMI's current exploration plan, amended on August 12, 1986, provides for activities leading to the identification of a prime area within the license site, which will be given first priority in the commerical phase; evaluation and integration of data to establish a resource database for prime and non-prime areas; and conducting at-sea exploration and a feasibility study in the latter years of the plan to prepare for permit application. Expenditures for the ten-year plan are estimated at an average of $200,000 per year in the early years of the license with an increase to $800,000–$1,000,000 in years 9 and 10.

Prior to issuance of the NOAA license, OMI had conducted an extensive program of site and resource evaluation and technology development. Since issuance of the license, OMI has identified its prime area and has gathered a considerable amount of resource data in that area in preparation for commercial mining. Conflicts have been negotiated and resolved with other seabed mining entities and resource data has been exchanged. In addition, OMI has participated in international environmental studies and developed and tested advanced deep sea exploration systems. These efforts, conducted in part in cooperation with its German partner, have resulted in higher expenditure levels than those predicted in its plan.

In the proposed revision, OMI has submitted an economic assessment showning that ocean mining will not be feasible until a sustained, higher price for nickel will support a reasonable return on investment. OMI has requested that the term of the license be extended through 1999. During years 7 through 15 the licensee proposes to monitor technological, legal and metal market developments and to obtain any necessary environmental data for an environmental impact statement relating to a permit application. In the latter years of the license, OMI will assess the need for foreign processing and the potential for conflicting uses of the site; reassess the timeliness of applying for a commercial permit and prepare for a permit application or seek extension of the license. Expenditures are estimated at $50,000–$100,000 per annum for years 7 through 12, with higher expenditures projected for years 13 through 15.

USA–3, Issued to Ocean Mining Associates

The activities contained in OMA's current exploration plan, approved on August 29, 1984, are directed toward acquiring, refining and integrating resource data; mining system development; processing system development and plant siting; the conduct of survey cruises; and environmental protection development. Prior to issuance of the exploration license, OMA concluded 20 years of substantial resource and engineering development work. Much of the work outlined in the exploration plan is analysis and integration of past and current exploration data as a basis for commercial recovery evaluation and planning. Expenditures in the plan were proposed at $200,000 during the early years of the plan increasing to $1,00,000–$3,000,000 for years 6 throgh 10.

Under its exploration plan, OMA has developed a broad license area resource/weather survey and data analysis program, yielding a database adequate for selection of candidate mining subareas. It has developed and designed transfer-at-sea and transport systems, and developed, designed and tested base case mining and base case processing systems. All known license area overlap conflicts have been resolved and, as a result, a substantial body of license area data was received and integrated into OMA's data system. OMA proposed environmental preservation and impact reference areas within its license site to be set aside for monitoring and contributed related environmental data to NOAA. For these first six years, OMA has exceeded expenditures outlined in its exploration plan.

OMA's proposed revision requests an extension of its license term until 1999 and cites the following reasons: Metals market instability, early completion of scheduled activities, acquisition of substantial data, and potential improvement in research strategies and survey systems. Activities for years 13 through 15 will focus on the completion of data archives; monitoring legal, technical and economic ocean mining activities; and participation in cooperative environmental research efforts. In years 7 through 15, environmental monitoring plans will be developed and survey capability will be acquired. Technical data will be integrated and planning commenced for process plant siting and mobilization. The last two years of the license will be directed toward preparation for permit application assuming favorable economic conditions; i.e., selection of a logical mining unit and initial mining subareas, planning for fine-grid survey work and completion of documentation. Expenditures are estimated at $50,000 for years 7 through 12, with higher expenditures projected for years 13–15, from $450,000 to $1,500,000.

Subject to 15 CFR 970.902, which excludes confidential information from public disclosure, interested persons will be permitted to examine the applications for revision and to provide comments by May 28, 1991. These documents may be examined at the below listed address.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Ave. NW., suite 710, Washington, DC 20235, (202) 673–5117.

Dated: March 15, 1991.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–7056 Filed 3–25–91; 8:45 am]

BILLING CODE 1350–12–M

Marine Sanctuaries; Scoping Meetings on the Florida Keys National Marine Sanctuary, FL

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce, in cooperation with the U.S. Environmental Protection Agency Region IV.

ACTION: Public scoping meetings.

SUMMARY: On November 16, 1990, President Bush signed Public Law 101–605 and designated 2,600 square nautical miles of coastal waters as the Florida Keys National Marine Sanctuary (FKNMS). The designation imposed a prohibition on the leasing, exploration, development or production of minerals or hydrocarbons and restricts certain commercial vessel traffic. In addition, Public Law 101–605 requires the Secretary of Commerce to develop a comprehensive management plan and promulgate implementing regulations to protect Sanctuary resources. In developing the management plan, the

Secretary is directed to consult with appropriate Federal, state and local government authorities, as well as a newly established Advisory Council and the public. The statute also directs the Administrator of the U.S. Environmental Protection Agency and the Governor of the State of Florida, in consultation with the Secretary of Commerce, to develop a comprehensive water quality protection program for the Sanctuary.

The Department of Commerce's National Oceanic and Atmospheric Administration, in cooperation with the U.S. Environmental Protection Agency Region IV and, pursuant to 40 C.F.R. 1051.7, will hold six (6) public Scoping Meetings to determine the range and significance of issues related to the development of a comprehensive management plan and water quality protection program for the Florida Keys National Marine Sanctuary.

The locations and times of the Scoping Meetings are as follows:

DATES:

April 10, 1991 (7 p.m.) Sheraton Key Largo Resort, 97000 Overseas Highway (MM 97), Key Largo.

April 11, 1991 (7 p.m.) University of Miami, Rosenstiel School of Marine and Atmospheric Science (RSMAS), RSMAS Hall, 4600 Rickenbacker Causeway, Miami.

April 15, 1991 (7 p.m.) Marathon High and Middle School, Main Auditorium, 350 Sombrero Beach Road, Marathon.

April 16, 1991 (7 p.m.) Key West High School, Main Auditorium, 2100 Flagler Avenue, Key West.

April 17, 1991 (7 p.m.) University of South Florida, Bayboro Campus, Davis Building, room 130, 140 7th Avenue South, St. Petersburg.

May 6, 1991 (10 a.m.) Department of Commerce, Herbert C. Hoover Building, 14th Street, NW. & Constitution Avenue, room 4830, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Pamala James, NOAA/Sanctuaries and Reserves Division, suite 714, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202) 673–5122.

Ms. Paige Gill, Key Largo National Marine Sanctuary, P.O. Box 1083, Key Largo, Florida 33037, (305) 451–1644

Ms. Lauri MacLaughlin, Looe Key National Marine Sanctuary, Route 1, Box 782, Big Pine Key, Florida 33043, (305) 872–4039.

SUPPLEMENTARY INFORMATION: Public Law 101–605 designates the Florida Keys National Marine Sanctuary (FKNMS) and directs the Secretary of Commerce to develop a comprehensive management plan and promulgate implementing regulations to protect sanctuary resources. The statute also directs the Administrator of the U.S. Environmental Protection Agency and the Governor of the State of Florida, in consultation with the Secretary of Commerce, to develop a comprehensive water quality protection program for the Sanctuary. After completion, the water quality protection program should be incorporated into the comprehensive management plan unless the Secretary of Commerce determines the program does not adequately protect sanctuary resources.

The boundary of the FKNMS extends southward on the Atlantic Ocean side of the Florida Keys from the northeasternmost point of the Biscayne National Park along the 300–foot isobath for over 200 nautical miles to the Dry Tortugas. It then turns north and east encompassing a portion of Florida Bay on the Keys' Gulf of Mexico side. The landward boundary is the mean high water mark. The existing Key Largo and Looe Key National Marine Sanctuaries are incorporated. However, Everglades National Park, Biscayne National Park and Fort Jefferson National Monument are excluded from the Sanctuary.

Public Law 101–605 states that the FKNMS shall be managed and regulations enforced under all applicable provisions of title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 (16 U.S.C. 1431 *et seq.*) as if the Sanctuary had been designated under the MPRSA. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for their conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuaries and Reserves Division (SRD).

To comply with the provisions of the MPRSA, NOAA will conduct the following activities in the process of developing a comprehensive management plan and regulations: hold public scoping meetings; consult with the Advisory Council once it is established; provide the South Atlantic and Gulf of Mexico Regional Fishery Management Councils and the Florida Marine Fisheries Commission with the opportunity to draft regulations for fishing activities; publish a Draft Management Plan, Draft Regulations, and Draft Environmental Impact Statement; hold public hearings to receive the views of interested parties on these draft documents; submit a Prospectus to the Committees on Merchant Marine and Fisheries of the House of Representatives and Commerce, Science, and Transportation of the Senate; and publish a Final Management Plan, Final Regulations, and a Final Environmental Impact Statement.

Natural Resources

The Florida Reef Tract begins offshore from the South Miami area and forms an arc that gradually turns in a southwesterly to westerly direction as it extends approximately 200 nautical miles to the Dry Tortugas. The reef tract parallels the chain of emergent Florida Keys averaging approximately 5 nautical miles offshore. The tract is composed of a series of individual living reefs separated from each other by considerable areas which do not contain living coral formations. Virtually all of the reef tract is located within the boundaries of the Florida Keys National Marine Sanctuary (FKNMS).

Coral reefs are among the most biologically productive of all natural communities. They occur in clear, tropical waters, and tolerate only minor fluctuations of physical and chemical oceanographic parameters. The existence of the Florida reef tract is primarily the result of the proximity of the Florida Current, which carries warm, clear water of normal salinity northward along the seaward edge of the outer reef.

The most extensive living areas of the Florida reef tract occur in the northern portion, while in the southern sector well developed reefs are generally smaller and are separated from each other by greater distances. A significant determinant of coral distribution in the Middle and Lower Keys is exposure to Florida Bay waters. Numerous inlets and passages through islands allow the waters of Florida Bay to flow out to the reef tract. The unfavorable salinity, temperature, and turbidity regimes of such waters create a stressful condition for the reefs.

The coral reef communities of the Florida Keys are comparable to those found throughout the Caribbean and in the waters of the tropical Atlantic Ocean. However, the coral reefs of the Florida Keys are part of a much broader and complex ecosystem that begins onshore, and spreads offshore to encompass thousands of square miles of mangroves, seagrasses, hardbottom habitats, patch reefs, transitional reefs, bank reefs and intermediate to deep reefs. Each of these habitats support

diverse assemblages of fishes and invertebrates.

Within the boundaries of the FKNMS, large seagrass beds exist in Florida Bay and in back reef areas. These seagrass areas provide shelter for numerous invertebrates and fishes and are an important food source for some sea urchins, turtles, and manatees. They also provide a nursery ground for spiny lobster, shrimp, and many commercial and sportfishes including snapper, pompano, snook, and spotted sea trout.

With the boundry of the FKNMS extending landward to the mean high water mark, numerous mangrove areas are encompassed by the Sanctuary. Mangroves act as a filter by trapping debris and sediment washed from the land. In addition, mangrove roots provide nursery grounds to many species of fish and invertebrates.

Cultural Resources

The marine waters within the FKNMS contain a wide variety of historical and cultural resources. Numerous historically significant shipwrecks have been documented in the coastal waters and it is believed that some terrestrial prehistoric sites exist in the area. In addition, three are lighthouses of historical value scattered along the reef tract, including Carysfort Reef Lighthouse.

Human Uses

The reefs within the FKNMS are considered particularly fragile because they occur at the northernmost range for sustained coral reef growth. In addition, the reefs are subject to a wide range of human-induced stresses including pollution and damage from careless diving and boating practices. The Florida Keys are economically dependent on the surrounding marine ecosystem. Prior to the early 1970's, the major industry in the Florida Keys was commercial fishing, including the harvest of spiny lobster, grouper, stone crabs, pink shrimp and snapper. Tourism is currently the major industry in Monroe County and attracts over 1.5 million visitors to the Keys each year. Their activities include diving and recreational boating and fishing.

Development of a Management Plan

To provide a blueprint for managing the sanctuary, NOAA is developing a comprehensive management plan. Public Law 101–605 and title III of the MPRSA lay out the process and provide guidance on how the plan must be developed. The Act also requires the Administrator of the Environmental Protection Agency and the State of Florida, in consultation with NOAA, to develop a comprehensive water quality protection program to be included in the management plan. Public Law 101–605 requires that the water quality program be completed within 18 months of enactment and that the management plan and regulations be developed within 30 months. The plan must address the following issues:

(1) Facilitate all public and private uses of the Sanctuary consistent with the primary objective of Sanctuary resource protection;

(2) Consider temporal and geographical zoning, to ensure protection of sanctuary resources;

(3) Incorporate regulations necessary to enforce the elements of the comprehensive water quality protection program unless the Secretary of Commerce determines that such program does not meet the purpose of which the Sanctuary is designated or is otherwise inconsistent or incompatible with the comprehensive management plan;

(4) Identify needs for research and establish a long-term ecological monitoring program;

(5) Identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations;

(6) Ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary;

(7) Promote education, among users of the Sanctuary, about coral reef conservation and navigational safety; and

(8) Incorporate the existing Looe Key and Key Largo National Marine Sanctuaries into the Florida Keys National Marine Sanctuary.

NOAA has identified issues and activities that may warrant review. These include: physical impacts including dredging, anchor damage, propeller wash, damaging fishing methods, vessel groundings, and diver damage; wetland (mangrove) damage and loss; water quality issues including point and nonpoint source discharges (agricultural and residential stormwater water runoff, sewage disposal, oil discharges); and natural perturbations.

Through these scoping meetings, NOAA intends to explore the previously listed issues, identify new issues, and gather information on topics that should be addressed by the management plan.

In addition to the scoping meetings, opportunities for public participation will include solicitation of comments on the draft management plan/environmental impact statement and regulations, and formal public hearings. Additional public input will be solicited through the Advisory Council and technical workshops that will be scheduled over the coming year.

John J. Carey,

Deputy Assistant Administrator, National Ocean Service.

[FR Doc. 91–7131 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–08–M

Frequency Management Advisory Council; Meeting

National Telecommunications and Information Administration

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of meeting, frequency management advisory council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet on April 12, 1991 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Discussion of the recommendations contained in the NTIA spectrum study U.S. Spectrum Management: Agenda for the Future;

(2) Report of the FMAC VI-CITEL Subcommittee;

(3) Report on the activities of the ITU High Level Committee, and preparations for WARC–92.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before April 10,

1991. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary (Acting), FMAC, Mr. W. Russell Slye, National Telecommunications and Information Administration, room 4099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202–377–1850.

Dated: March 20, 1991.

W. Russell Slye,

Executive Secretary (Acting), Frequency Management Advisory Council, National Telecommunications and Information Administration.

[FR Doc. 91–7030 Filed 3–25–91; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on 02–03 May 1991, in Herrmann Hall (Bldg 220) at the School. All sessions will be open to the public.

The purpose of the meeting is to elicit the advice of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting, contact: Captain Gary K. Iversen, USN (Code 007), Naval Postgraduate School, Monterey, California, 93943–5000, Telephone: (408) 646–2513.

Dated: March 18, 1991

Guy B. Roberts,

LtCOL, JAGC, USMC, Federal Register Liaison Officer.

[FR Doc. 91–7067 Filed 3–25–91; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee will meet on April 9–10, 1991. The meeting will be held at the Naval War College, Newport, Rhode Island; the Naval Underwater Systems Center, Newport Laboratory, Newport, Rhode Island; and the General Dynamics Facility, Quonset Point, Rhode Island. The meeting will commence at 10 a.m. and terminate at 4:30 p.m. on April 9; and commence at 8 a.m. and terminate at 4 p.m. on April 10, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on war gaming and simulations; submarine research, development, and advanced technology programs; and submarine construction and assembly techniques. The agenda will include briefings, demonstrations and discussions related to strategic planning, collective force coordination, combat systems analysis, advanced submarine technology assessment, weapons analysis, superconductivity, electromagnetics, and submarine design and assembly techniques. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: March 18, 1991.

G.B. Roberts,

Lieutenant Colonel, USMC, Federal Register Liaison Officer.

[FR Doc. 91–7066 Filed 3–25–91; 8:45 am]

BILLING CODE 3810–AE–M

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet April 25, 1991 from 0900 to 1500, at the Center for Naval Analysis, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LT J.E. Williams, USN (OP–213E), Pentagon, room 4D534, Washington, DC 20350, Telephone number: (703) 697–8887.

Dated: March 18, 1991.

G.B. Roberts,

LtCOL, JAGC, USMC, Federal Register Liaison Officer.

[FR Doc. 91–7068 Filed 3–25–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Special Study Panel on Education Indicators; Meeting

AGENCY: Special Study Panel on Education Indicators, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Special Study Panel on Education Indicators. this Notice also describes the function of the Study Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: April 15, 1991, 8:30 a.m. to 5 p.m. and April 16, 1991. 8:30 a.m. to 5 p.m.

ADDRESS: Embassy Suites Hotel, 4300 Military Road NW.—Wisconsin at

Western Avenue, Washington, DC 20015.

FOR FURTHER INFORMATION CONTACT: Paul Mertins, National Center for Education Statistics, 555 New Jersey Avenue, NW., Washington, DC 20208–5650, (202) 219–1369.

SUPPLEMENTARY INFORMATION: The Special Study Panel on Education Indictors is established under section 406(g)(3) of the General Education Provision Act (20 U.S.C. 1221e–1). The Study Panel is established to make recommendations concerning the determination of education indicators. The Study Panel advises the Commissioner of the National Center for Education Statistics on the development of indicators on the current state of the American education system. The meeting of the Study Panel is open to the public. The Agenda includes the following items: April 15—review of the Study Panel's progress and final draft of report; April 16—continued discussion leading to formal endorsement of a final draft.

Records are kept of all Study Panel proceedings and are available for public inspection from 9 a.m. to 5 p.m. at the office of the Study Panel at the National Center for Education Statistics, 555 New Jersey Avenue NW., room 517, Washington, DC 20208–5650.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 7050 Filed 3–25–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–53, for the transfer of 31.884 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235 from France to Japan for use as fuel elements in the JRR–3 research reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 20, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–7120 Filed 3–25–91; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/JA(EU)–52, for the transfer of 1.515 kilograms of uranium, enriched to approximately 19.95 percent in the isotope uranium–235, from Germany to Japan, for irradiation in the Oarai test reactor for research purposes.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 20, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–7121 Filed 3–25–91; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award to University of Wyoming (Cooperative Agreement)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Cooperative Agreement renewal award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a twenty-four (24) month renewal award to the University of Wyoming, Department of Management Resources, Laramie, Wyoming, for research entitled "Modeling of Hydrologic Conditions and Solute Movement in Processed Oil Shale Solid Waste Embankment under Simulated Climatic Conditions." The approximate amount of the Agreement will be $690,000 of which the participant will share $96,000.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 291–4386, Procurement Request No. 21–91LC11084.501.

SUPPLEMENTARY INFORMATION: The objectives of this research is to (1) determine and assess effects on the hydrologic and geotechnical properties of disposed processed oil shale waste material caused by extreme precipitation input sufficient to achieve steady state drainage of water through the oil shale waste material and (2) determine and assess effects on the hydrologic and geotechnical properties of disposed processed oil shale caused by multiple freeze-thaw cycles and extreme storm events.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–7122 Filed 3–25–91; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Nonresidential Transportation Energy Consumption; Solicitation of Comments on Energy Related Transportation Data in the Nonresidential Sector

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is examining data requirements, user needs, and availability of energy consumption and related data from the nonresidential transportation sector in the United States. Nonresidential transportation energy use represents about 20 percent of the total U.S. end use energy consumption and about 34 percent of U.S. end use consumption of petroleum products. Currently, the EIA collects energy consumption data for personal-use vehicles in the residential transportation sector, in conjunction with vehicle characteristics and vehicle use practices. Comparable data are not collected by the EIA for the nonresidential transportation sector, which comprises: motor vehicles for passenger and freight; rail; air; and marine transportation.

Section 52(a) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275 (FEA)) requires the EIA to establish a national energy information system that "* * * shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate * * *." Section 52(b) of the FEA sets forth minimum energy information needs for such a system. However, these are "* * * subject to the resources available and the Director's [Administrator's] ordering of those resources to meet the responsibilities * * *" of the EIA. Part of the ongoing process of assessing EIA's program is evaluating the availability and need for data on all aspects of energy throughput.

Nonresidential transportation is an extremely diverse sector, encompassing several modes of travel spread across many types of economic activity (see Table 1). The EIA is currently exploring the need for nonresidential transportation data and the availability of such data, with emphasis on: (1) Motor freight and passenger services, encompassing automobiles and related vehicles, light duty trucks, and medium/heavy duty trucks; and (2) buses.

The purpose of this Federal Register notice is to obtain information on: The need for energy data; the types of data that can be provided; and the strengths and weaknesses of existing data.

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intentions to do so as soon as possible.

ADDRESSES: Send comments to: Martha M. Johnson, (EI–651), Energy Information Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Johnson's telephone number is (202) 586–1135. The relevant FAX number is (202) 586–9753.

FOR FURTHER INFORMATION: Requests for additional information should be directed to Ms. Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The EIA serves as the Government's primary source of energy statistics and provides information to the Executive Branch, Congress, State and local government, industry and the general public. EIA's mission is to ensure that accurate, timely, and objective statistics on the Nation's energy position are available for use in private and public decisionmaking. The legislation that created the EIA provides for the collection of data on energy supply and demand to fulfill these responsibilities. As part of its program, the EIA conducts energy consumption surveys in the residential, residential transportation, commercial, and manufacturing sectors.

II. Request for Comments

The EIA is soliciting comments from data users on the data they require for public policy, research, and program monitoring purposes in the area of nonresidential transportation energy consumption. EIA is also soliciting comments from potential data providers and others on the types of applicable information currently available from sources such as fuel suppliers or their associations, transportation providers or their associations, other Federal, State or local government agencies, or other private sources.

In addition to the publication of this notice, the EIA will directly contact and solicit comments from public policymakers (at the local, State and Federal levels), public policy groups, the transportation energy research community, potential survey respondents, and industry trade associations.

The following general questions are provided to assist in the preparation of responses:

As a current or prospective transportation data user:

1. For what purposes do you use or would you use nonresidential transportation energy consumption data? Be specific.

2. What data sources are you currently using, if any? What types of data are provided? How often are the data published? Are there costs associated with using it? Do you have access to the individual data or only published aggregate data? How are data presented: tabulations, reports, graphs?

3. What are the strengths and weaknesses of these sources?

4. In your opinion, what are the major gaps, if any, in nonresidential transportation energy consumption data?

5. Please provide other comments that you believe to be relevant.

As an owner or operator of nonresidential transportation vehicles, or a representative of owners or operators:

1. Do you or your establishment/firm/organization currently maintain energy consumption and expenditure data?

2. If you do maintain such data, are the data compiled, monthly, annually, or for some other period of time? Are the data maintained consistently, or intermittently? Are the data maintained in a paper or electronic medium?

3. What type of data can you provide on: (1) Vehicle characteristics (e.g., model year, engine size, and number of axles); (2) vehicle or fleet use (e.g., Are the vehicles kept at a company site or are they kept by employees? Are the vehicles used solely for business or for both business and personal use?); and (3) vehicle or fleet maintenance (e.g., Are the vehicles centrally fueled?).

4. Can you provide vehicle miles traveled and/or some other measure of total use, such as passenger miles or ton miles traveled, in the aggregate and/or per vehicle?

5. Are you aware of other Federal, State or local agencies or private organizations that collect similar data? If so, please provide the names of such agencies or organizations.

EIA is also interested in receiving comments from persons regarding their views on the costs and benefits of the EIA assembling data on nonresidential transportation.

Any written comments received in response to this notice will be available for public inspection at the DOE's Freedom of Information Office.

Authority: Sections 5(a), 5(b), 13(b) and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), 790(a).

Issued in Washington, DC, March 20, 1991.

Calvin A. Kent,

Administrator, Energy Information Administration.

TABLE 1.—CATEGORIZATION OF NONRESIDENTIAL VEHICLES BY SECTORAL ASSOCIATION AND MODE OF TRANSPORT

Mode of transport	Sectoral Association				
	Household	Private commercial enterprises		Public service/ government vehicle fleets	Industrial (manufacturing, agricultural, mining, construction)
		Transportation service	Other enterprises		
Automobiles and Related Vehicles.	• Independent Salespersons' Vehicles • Independent Taxis • Company Cars • Independent Contractor Vehicles	• Taxis • Rental Cars • Limousines • Privately-owned ambulances	• Pizza Delivery Vehicles • Driver School Cars • Bookmobiles • Other Commercial Support Vehicles (florist, etc.)	• Government Fleets • Police/Fire Fleets • Ambulances • Postal Service Cars • Military Cars	• Support Vehicles at Industrial Sites. • Company cars.
Light-Duty Trucks	• Independent Contractor Vehicles	• Light Duty Rental Trucks	• Landscaping Trucks • Support for Commercial Activity • Light Delivery Trucks	• Government Fleets • Military Fleets • Fire Trucks • Postal Service/UPS Fleets	• Support Vehicles at Industrial Sites.
Medium/Heavy-Duty Trucks.	• Independent tractor-trailer rigs • Independent dump trucks	• Rental Trucks • Moving Vans • Garbage Trucks • Armored Trucks • Company-owned tractor trailers	• Cement Trucks • Tow Trucks • Large Delivery Trucks	• Fire Trucks • Municipal Garbage Trucks • Utility Service Vehicles	• Company owned delivery and service trucks. • Support Vehicles at Sites (Cement Trucks, Dump Trucks, Earthmovers, Bulldozers).
Buses	• Privately-owned tourmobiles and shuttle buses	• Intra-City Bus Lines • Intercity Bus Lines • Chartered Buses	• Private School Buses • Company-Run Shuttle Buses • Church Buses	• Government/School District School Buses • Military Transport Buses	• Onsite shuttle/touring Buses.
Passenger Rail	• N/A	• Commercial Locomotives • Subway/Trolley/other rail transit	• Shuttle Services at Airports, Amusement Parks, etc.	• N/A	• N/A.
Rail Freight	• N/A	• Commercial Freight Company Locomotives	• Support, hauling for commercial enterprises	• N/A	• Company-owned locomotives for moving products (e.g., coal) onsite.
Air Passenger	• Personal Planes • Traffic Reporters' Vehicles (privately owned)	• Commercial Aircraft (incl. certain general aviation)	• Corporate Jets • Company-owned traffic reporters' aircraft	• Military Planes	• Corporate Jets. • Shuttle Service Aircraft.
Air Freight/Other Nonpassenger Services.	• N/A	• Air Freight Aircraft (Federal Express)	• General Aviation • Air Show Fleets	• Military Cargo • Weather Service Planes	• Crop Dusting Planes.
Water Transport	• Recreational Boats • Tour Boats • Fishing Boats	• Tugboats • Cruise Lines • Ferries • Barge Lines	• Fishing Boats • Other rental boats	• Coast Guard ships • Police support boats • Military Ships	• Company-owned Freighters, Ferries, and Barges. • Farm Implements.
Other	• Motorcycles • Mopeds • Scooters	• Tourmobiles • Cycles/Mopeds/ Scooters for rent	• Amusement Park Rides • Golf Carts • Fork Lifts	• N/A	• Construction Vehicles. • Cranes. • Fork Lifts.

Note: Entries in the body of the table are examples of the types of vehicles represented, not an exhaustive listing.
N/A: Not Applicable.
Source: Energy Information Administration, 1990.

[FR Doc. 91–7126 Filed 3–25–91; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–09–NG]

Natural Gas Pipeline Co. of America Great Lakes Gas Transmission Limited Partnership; Order Granting Long-Term Authorization To Import Natural Gas from Canada and Amending Authorization

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting long-term authorization to import natural gas from Canada and amending authorization.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Natural Gas Pipeline Company of America (Natural) authority to import up to 171,325 Mcf per day of Canadian natural gas through October 31, 2000, to be purchased from Western Gas Marketing Limited. The gas would enter the United States near Emerson, Manitoba using the pipeline facilities of Great Lakes Gas Transmission Limited Partnership (Great Lakes). The order also amends Great Lakes' existing import authorization to eliminate volumes imported by Great Lakes for Natural.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 21, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-7123 Filed 3-25-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-33-NG]

Power City Partners, L.P.; Conditional Order Granting Long-Term Authorization To Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of a conditional order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice that it has issued an order granting Power City Partners, L.P. conditional authority to import at Massena, New York, up to 21,000 Mcf per day and a total of 111.3 Bcf of Canadian natural gas through October 31, 2007. Power City would buy the gas from Husky Oil Operations Ltd. and its affiliate Canterra Energy Ltd. to fuel a 79 megawatt cogeneration facility which Power City plans to build at an Aluminum Company of America plant in Massena. Transportation from the international border would be provided by St. Lawrence Gas Company (St. Lawrence). Only minor new pipeline construction would be required for this delivery.

The conditional order makes preliminary findings and indicates DOE's determination at this time on all but the environmental matters in this proceeding. The approval is subject to findings of an environmental assessment (EA) being prepared by DOE on the proposed two-mile connecting pipeline and meter station to be constructed between St. Lawrence' system and the cogeneration facility. A final order upon completion of the EA will address all environmental aspects of the application.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-7124 Filed 3-25-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-04-NG]

Rochester Gas and Electric Corp. Conditional Authorization To Export Natural Gas To and Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of conditional order authorizing the exportation of natural gas to and importation of natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order conditionally authorizing Rochester Gas and Electric Corporation (RG&E), commencing on the date of first delivery on the proposed Empire State Pipeline to export to Canada up to 227.5 MMcf per day of natural gas plus such additional gas as may be used for transportation fuel, and to import from Canada up to 227.5 MMcf per day of natural gas over a 15-year period. The export and import of natural gas conditionally approved is part of a transportation arrangement to provide additional sources of gas for RG&E's system supply now dependent upon CNG Transmission Corporation for most of its gas supply requirements and all of its transportation.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 19, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-7125 Filed 3-25-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1111-001, et al.]

East Tennessee Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP90-1111-001]

March 14, 1991.

Take notice that on March 8, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed a petition in Docket No. CP90-1111-001 to amend its pending application in Docket No. CP90-1111-000 to modify customer contract demands, to modify facilities required to implement the requested changes in service, and to construct and operate facilities to serve a new customer, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

East Tennessee states that the following customers request contract demand increases from those reflected in the original application:

Customer	lovers.	Requested Increase (Mcf per day)
City of Cookeville		500
Town of Madisonville		200
City of Rockwood		546
United Cities Gas Company (Zone 1)		3,500
Bowater Incorporated		500
Olin Corporation		150
General Shale Products Corporation		250
East Tennessee states that the following customers request reductions in contract demand:		
Middle Tennessee Utility District		1,000
City of Sweetwater		400
Natural Gas Utility District of Hawkins County		800
United Cities Gas Company (Zone 2)		1,500
United Cities Gas Company (Zone 3)		7,000

East Tennessee also requests authority to establish a contract demand of 500 Mcf per day to City of Pulaski (Pulaski), a new customer.

East Tennessee indicates that to implement the above changes, it would not be necessary to restage compressors nor make compressor additions as proposed in the original application. East Tennessee states that at Stations 3101, 3104 and 3107 where compressor additions were proposed, it now proposes to replace the ten existing engines with larger capacity turbines. It is also indicated that the compressor additions at Stations 3110 and 3210 have been eliminated. East Tennessee also proposes to construct and operate metering facilities to serve Pulaski.

East Tennessee estimates a construction cost of the modified facilities of $25,175,000, which would be financed from funds on hand or, if

necessary, from funds outside East Tennessee.

No other changes are proposed.

Comment date: April 4, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

United Gas Pipe Line Company

[Docket Nos. CP91-1524-000, CP91-1525-000, CP91-1526-000, CP91-1527-000]

March 14, 1991.

Take notice that on March 12, 1991, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above reference dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number[2] date filed	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule service type	Related docket, contract date
			Receipt	Delivery		
CP91-1524-000 (3-12-91)	Rangeline Corporation	1,545 1,545 563,925	MS	AL	2-1-91, FTS, Firm	ST91-7144-000, 2-1-91.
CP91-1525-000 (3-12-91)	Rangeline Corporation	2,060 2,060 751,900	MS	MS	2-1-91, ITS, Interruptible.	ST91-7099-000, 1-18-91.
CP91-1526-000 (3-12-91)	Transamerican Gas Transmission Corporation.	103,000 103,000 37,595,000	TX	TX	1-29-91, ITS, Interruptible.	ST91-7100-000, 1-29-91.
CP91-1527-000 (3-12-91)[3]	Rally Pipeline Corporation.	58,710 58,710 21,429,150	LA, MS, TX	AL, LA, MS, TX	2-18-91, ITS, Interruptible.	ST91-7142-000, 7-31-87.

[1] Quantities are shown in MMBtu.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Amended 6-2-89 and 1-25-91.

3. CNG Transmission Corp.

[Docket No. CP91-1518-000]

March 14, 1991.

Take notice that on March 11, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, WV 26301, filed in Docket No. CP91-1518-000 a request purusant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to add a new delivery point to Fillmore Gas Company, Inc. (Fillmore), an existing local distribution customer in upstate New York, and to construct and operate appurtenant facilities, under CNG's blanket certificate issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to add the new delivery point adjacent to its existing Line No. TL-546, located in the town of Rock Glen, Wyoming County, New York, to be known as the Rock Glen Connection. CNG states that at its own expense, it would design, construct, operate, maintain, and own the line tap which would be necessary at the proposed new point of interconnection between CNG's Line No. TL-546 and the following facilities to be owned by Fillmore. CNG states that at its own expense, Fillmore would design, construct, operate, maintain, and own any natural gas pipeline, measuring and regulating facilities necessary to receive natural gas from CNG at the proposed connection. It is further stated that at its own expense, Fillmore would design, construct, operate, maintain, and own any auxiliary equipment or installations needed for efficient operation or gas distribution at the proposed connection.

CNG states that Fillmore has obtained approval from the State of New York to enlarge its service territory to include areas in and around Rock Glen, New York, and that this proposed delivery point would enable Fillmore to provide service to the new areas in its expanded service territory. CNG indicates that it is authorized under Rate Schedule SCR of its FERC Gas Tariff, Original Volume No. 1, pursuant to their Service Agreement dated April 6, 1988, to provide Fillmore with all the natural gas it needs to meet its requirements within its market areas, up to an annual limit of 200,000 Mcf of natural gas.

CNG states that any increase in volumes to Fillmore due to this proposal would be small and well within Fillmore's existing contractual rights. It is estimated that increased throughput would not be more than 10,000 Mcf of natural gas per year. CNG indicates that it has sufficient capacity to accomplish the deliveries to Fillmore without detriment or disadvantage to CNG's other customers.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Eastern Shore Natural Gas

[Docket No. CP91-1433-000]

March 14, 1991.

Take notice that on March 1, 1991, Eastern Shore Natural Gas Company (Eastern Shore) P.O. Box 615, Dover Delaware, 19903-0615, filed in Docket No. CP91-1433-000 a request purusant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a

new delivery point for Delmarva Power and Light Company (Delmarva) under the authorization issued in Docket No. CP83–40–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that by the authority granted in Docket No. CP83–412–000, Eastern Shore established a new delivery point for Delmarva, known as Boyd's Corner to serve a single customer, Van Wingerden International. Eastern Shore was authorized to deliver up to 70 Dekatherms per day and 25,000 dekatherms per years to Boyd's Corner. It is alleged that Delmarva recently requested Eastern Shore to expand its authority at Boyd's Corner to provide for the delivery of gas to Delmarva for resale by Delmarva to customers other than Van Wingerden International and to increase the maximum delivery quantity. Eastern Shore, therefore, requests authority to deliver a total of 600 dekatherms per day and 219,000 dekatherms per year to the Boyd's Corner delivery point for resale by Delmarva. Delmarva would use these deliveries from Eastern Shore for general system supply.

Eastern Shore contends that the deliveries to Boyd's Corner are made under it's T–1 Rate Schedule. It is alleged that Eastern Shore currently has authority to deliver up to 3,000 dekatherms per day to Delmarva at three points, one of which is Boyd's Corner. The increased deliveries at Boyd's Corner would result in corresponding decreases at the two other delivery points. Increasing the delivery quantity at Boyd's Corner would have no detrimental impact on Eastern Shore's other customers and would require no additional pipeline facilities.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation, Tennessee Gas Pipeline Company and ANR Pipeline Company.

5. [Docket Nos. CP91–1506–000, CP91–1507–000, CP91–1508–000, CP91–1517–000, and CP91–1519–000]

March 14, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (dated filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points[1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-1506-000 (3-8-91)	Newport Steel Corp. (end-user).	12,000 9,600 4,380,000	KY	KY, PA	1-15-91, ITS, Interruptible.	ST91-6940, 2-1-91.
CP91-1507-000 (3-8-91)	Transco Energy Marketing Company (marketer).	80,000 64,000 29,200,000	VA	VA	11-1-90, ITS, Interruptible.	ST91-6637, 1-10-91.
CP91-1508-000 (3-8-91)	Pennzoil Gas Marketing Company (marketer).	5,000 4,000 1,825,000	VA, KY, WV, OH, MD, PA, NY.	VA, KY, WV, OH, MD, PA, NY.	6-10-90, ITS, Interruptible.	ST91-6841, 2-1-91.
CP91-1517-000 (3-11-91)	Amerada Hess Corporation (producer).	[2] 100,000 100,000 36,500,000	OTX	TX	1-22-91, IT, Interruptible	ST91-7149 2-1-91.
CP91-1519-000 (3-11-91)	Transtate Gas Service Co. (marketer).	[3] 2,000 730,000	LA, OLA	WI	5-10-90, FTS-1, Firm.	ST91-7543, 11-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.
[3] Measured in dt equivalent.

Applicant's address	Blanket docket
ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243.	CP88-532-000.
Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314.	CP86-240-000.
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.	CP87-115-000.

6. Algonquin Gas Transmission Company.

[Docket No. CP88-187-005]

March 14, 1991.

Take notice that on March 5, 1991, Algonquin Gas Transmission Company (Algonquin), located at 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88-187-005, pursuant to section 7(c) of the Natural Gas Act a petition to amend the certificate of public convenience and necessity issued on September 13, 1990, in order to delete and transfer certain facilities involved in two other Algonquin dockets, phase the construction schedule of the facilities, and receive gas at additional receipt points on its system, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Algonquin proposes to make the following four changes to the September 13, 1990, Order:

I. Delete certain facilities and transfer to the ongoing proceeding in Docket No. CP89-661 other facilities that were previously authorized in the above referenced docket.

II. Transfer into this docket, for rate making purposes a compressor unit proposed to be installed at Algonquin's Stony Point, New York Compressor Station authorized by the

Commission in an order issued July 2, 1990 in Docket No. CP88–185–002.

III. Phase the schedule for completion of the construction work in this docket into two phases, with the first phase to be completed by December 1991 at a level of service of up to 37,000 MMBtu per day under Rate Schedule X–35 for Northeast Energy Associates and the second phase to be completed by December 1992 for full service up to 82,000 MMbtu per day.

IV. Receive gas at additional receipt points and retain 1.8 percent of the transportation volume as reimbursement for fuel for the period November 16, 1991 to April 15, 1992, as agreed by the parties.

Algonquin states that the changes proposed do not call for any environmental review since no new facilities are proposed. Algonquin proposes to recover, through a one-part demand charge, the level of costs approved in the September 13, 1990, Order and will absorb any differences in facilities costs during the period the initial rates are in effect. In order to ensure that the first phase of construction is completed by December 1991, Algonquin requests that the Commission act on this matter no later than May 15, 1991.

In addition, Algonquin asks that the authorization requested in this docket be granted at the same time as approval of a pending request to amend the certificate in Docket No. CP88–185 and a soon-to-be filed amendment in Docket No. CP89–661–001 because of certain interrelated facilities.

Comment date: April 4, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Algonquin Gas Transmission Company

[Docket No. CP88–185–007]

March 15, 1991.

Take not that on March 5, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, MA. 02135, filed in Docket No. CP88–185–007, pursuant to section 7 of the Natural Gas Act for authorization to amend, on an expedited basis, the certificate(s) of public convenience and necessity issued to Algonquin in Docket Nos. CP88–185–000 and CP88–185–002 (52 FERC 61,001 (1990)). Algonquin proposes to reduce authorized rate schedule FTP Maximum Daily Transportation transfer to another proceeding for rate making purposes the increased capacity previously authorized, construct and operate certain natural gas facilities, remove and abandon certain facilities, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Algonquin states the purpose of this amendment is to seek Commission authorization to: (1) Reduce the authorized Rate Schedule FTP Maximum Daily Transportation Quantity (MDTQ) of Boston Gas Company (Boston Gas) by 18,608 MMBtu per day; (2) Transfer to another proceeding (Docket No. CP88–187–002) for rate-making purposes the increased capacity at the Stony Point New York Compressor Station authorized in the aforementioned order; (3) Establish a new delivery point and construct a new meter station and approximately 0.32 mile of 12-inch and 0.28 mile of 16-inch pipeline in Medford, Massachusetts for deliveries to Boston Gas in lieu of the authorized Malden, Massachusetts delivery point and related 1.5 miles of 24-inch pipeline; and (4) Remove and abandon certain interconnection facilities whose function will be supplanted by deliveries at the Medford Station.

Algonquin states the proposed amendment does not require any change in the initial rates approved in the mentioned order, and only involves minimal environmental review. In the event it appears that the environmental review will extend beyond May 15, 1991, Algonquin requests that the Commission phase the proceeding to dispose of the reduction in transportation service to Boston Gas and the shifting of the Stony Point compressor unit by May 15, and then to address the Medford delivery point authorization once environmental review is completed.

In addition, Algonquin asks that the authorization requested in this docket be granted at the same time as pending requests to amend the certificate in Docket No. CP88–187 and amendment to application in Docket No. CP89–661 because of certain interrelated facilities among these dockets.

Comment date: April 5, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Florida Gas Transmission Company

[Docket Nos. CP91–1537–000, CP91–1538–000, CP91–1539–000 and CP91–1540–000]

March 15, 1991.

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89–555–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day average day annual MMBtu	Receipt points[1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91–1537–000 (3–13–91)	Westvaco Corporation	500 375 182,500	TX, OTX, LA, OLA, MS, AL, FL.	FL	2–23–90, ITS–1, Interruptible.	ST91–7580, 3–1–91.
CP91–1538–000 (3–13–91)	United States Gypsum Company.	24,000 18,000 8,760,000	TX, OTX, LA, OLA, MS, AL, FL.	FL	2–23–90, ITS–1, Interruptible.	ST91–7579, 3–1–91.
CP91–1539–000 (3–13–91)	City of Clearwater	10,219 7,664 3,729,935	TX, OTX, LA, OLA, MS, AL, FL.	FL	2–23–90, ITS–1, Interruptible.	ST91–7578, 3–1–91.

Docket number (date filed)	Shipper name	Peak day average day annual MMBtu	Receipt points[1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-1540-000 (3-13-91)	PSI, Inc.	200,000 150,000 73,000,000	TX, OTX, LA, OLA, MS, AL, FL.	TX, OTX, LA, OLA, MS, AL, FL.	2-23-90, ITS-1, Interruptible.	ST91-7577, 3-1-91.

Offshore Louisiana and offshore Texas are shown as OLA and OTX.

9. Southern Natural Gas Company

[Docket Nos. CP91-1528-000,[4] CP91-1529-000, CP91-1530-000]

March 15, 1991.

Take notice that on March 12, 1991, Southern Natural Gas Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1], average, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-1528-000 3-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563	Fort Valley Utilities Commission.	1,676 1,676 611,740	Off TX, Off LA, TX, LA, MS, AL	GA	1-1-91, FT	CP88-316-000, ST91-6354-000.
CP91-1529-000 3-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563	Gulf States Paper Corporation.	1,300 1,300 474,500	Off TX, Off LA, TX, LA, MS, AL	AL	1-1-91, FT	CP88-316-000, ST91-6299-000.
CP91-1530-000 3-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563	City of Wrens, Georgia.	324 324 118,260	Off TX, Off LA, TX, LA, MS, AL	GA	1-1-91, FT	CP88-316-000, ST91-6954-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. National Fuel Gas Supply Corporation.

[Nos. CP91-1338-000, CP91-1339-000, CP91-1340-000, CP91-1341-000]

March 15, 1991.

Take notice that on February 22, 1991, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No.CP89-1582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-1338-000 2-22-91	Cranberry Pipeline Corp.	5,000 5,000 1,825,000	NY, PA	NY, PA	1-15-91, IT	ST91-6709-000.
CP91-1339-000 2-22-91	Citizens Gas Supply Corp.	155,376 155,376 56,712,240	NY, PA	NY, PA	1-24-91, IT	ST91-6711-000.
CP91-1340-000 2-22-91	Transco Energy Marketing Co.	75,375 75,375 2,751,875	NY, PA	NY, PA	1-1-91, IT	ST91-6708-000.
CP91-1341-000 2-22-91	Citizens Gas Supply Corp.	38,500 38,500 14,052,500	NY, PA	NY, PA	1-16-91, IT	ST91-6707-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. Colorado Interstate Gas Company

[Docket No. CP91-1500-000]

March 15, 1991.

Take notice that on March 8, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-1500-000 a request pursuant to §§ 157.205, 157.211, and 284.223 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act for authorization to construct a new meter station pursuant to CIG's Blanket Certificate issued in Docket No. CP83-21-000. Additionally, CIG states that it proposes to transport natural gas for Western Natural Gas and Transmission Corporation (Western), a marketer, under CIG's Blanket Certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7(c) of the Natural Gas Act, to make deliveries to the new delivery point, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that it would transport up to 4,000 Mcf per day for Western, pursuant to a new Transportation Service Agreement dated March 1, 1991, between CIG and Western. CIG would receive gas from existing points of receipt on its system in Wyoming and Colorado and redeliver the subject gas, less fuel gas and lost and unaccounted-for-gas, for the account of Western at a new delivery point in Weld County, Colorado. CIG states that it has been advised that such gas would be delivered to the Windsor Gas Processing Plant. CIG further states that the estimated average daily and annual quantities would be 2,000 Mcf and 360 MMcf, respectively.

Comment date: April 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

Stingray Pipeline Company

[Docket No. CP91-1505-000]

March 15, 1991.

Take notice that on March 8, 1991, Stingray Pipeline Company (Stringray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-1505-000 an application pursuant to section 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Stingray to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, all as more fully set forth into the application on file with the Commission and open to public inspection.

Comment date: April 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

13. Wintershall Pipeline Corporation and Hogan Pipeline Corporation

[Docket No. CP91-1516-000]

March 18, 1991.

Take notice that on March 11, 1991, Wintershall Pipeline Corporation, Five Post Oak Park, suite 800, Houston, Texas 77027, and Hogan Pipeline Corporation, 221 Wall Street, Columbia, Louisiana 71418, (Applicants), filed in Docket No. CP91-1516-000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that certain jointly-owned facilities located in Caldwell Parish, Louisiana constitute non-jurisdictional gathering facilities under section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection

Applicants own and operate gathering and instrastate transmission facilities located entirely within the State of Louisiana. Pursuant to a joint venture agreement Applicants state that they constructed and jointly own approximately 10 miles of 8-inch pipeline extending from a point in the Cotton Plant Field, Caldwell Parish, Louisiana to a point of interconnection with the interstate facilities of Texas Gas Transmission Corporation (Texas Gas) and approximately 3½ miles of 4-inch pipeline extending from a point in nearby Sardis Church Field, Caldwell Parish, Louisiana to the 8-inch Cotton Plant line. Applicants state that these facilities are not interconnected with any of their other intrastate facilities.

It is stated that the sole purpose and function of these facilities is to gather natural gas produced from the Cotton Plant and Sardis Church Fields and to deliver the gathered gas to a point on the facilities of Texas Gas which allows the producers in the fields to reach a much broader market for their gas. Applicants state that the facilities were constructed in response to requests by the producers in these fields to connect their production to Taxes Gas. However, it is stated that no single producer deemed the construction and operation of the proposed facilities to be economically feasible, and none of the producers were inclined to construct, own and operate a system whose jurisdictional status at the time was uncertain. Thus, Applicants state that they agreed to construct the facilities.

According to the Applicants, these facilities were constructed and placed into operation on February 1, 1988. It is stated that the 8-inch line commenced in the Cotton Plant Field at a flange located approximately 1.2 miles from the tailgate of the Cotton Plant, which processes gas from numerous wells in the field. Applicants state that producer-owned facilities extend from the plant to the point where the 8-inch line commences. From its commencement point, it is stated that the 8-inch line runs approximately 2.2 miles to a connection with the 3½ miles of 4-inch line bringing gas production from the Sardis Church Field. From that point

Applicants aver that the 8-inch line continues approximately 7.3 miles to the interconnection with Texas Gas. It is stated that these facilities are utilized solely to gather production from the Cotton Plant and Sardis Church Fields for delivery to Texas Gas.

Applicants state that they filed for transportation rates under § 284.123 in Docket No. ST88–2553–000 to allow them to commence section 311 transportation so that these facilities, or its owners, could not be construed to be subject to Natural Gas Act Regulation. It is stated that the Commission instituted a rate proceeding for a determination of whether the rate reflected in the petition was fair and equitable. Subsequently, it is stated that Applicants filed a settlement with the Commission to establish a fair and equitable rate of $0.075 per MMBtu, which the Commission accepted by letter order dated January 13, 1989. The parties state that, since the Section 311 authorization it received was for a three year period, they jointly filed for additional rate authorization for the three year period commencing January 28, 1991, in Docket No. RP91–9–000 requesting a transportation rate of $0.0818 per MMBtu.

Applicants submit that the facilities should be reclassified as gathering since it has never been expressly or explicitly determined that they were transmission facilities. It is submitted that these facilities fall within the ambit of the Commission's recent definition and application of the "modified primary function test", as set out in the September 17, 1990, order in *Amerada Hess Corporation, et al.*, 52 FERC 61,268 (*Amerada Hess*).

In *Amerada Hess*, Applicants state that the Commission modified the primary function test to require it to weigh all of the facts and circumstances in determining whether facilities are used primarily for transportation or primarily for gathering, rather than relying upon a single, isolated physical factor. It is stated that the facilities were constructed to gather natural gas production from a number of producers in the Cotton Plant and Sardis Church Fields. These facilities consist of small diameter pipe, 4 and 8-inch, of relatively short length, 3½ and 10-miles. It is further stated that the pressure in the facilities is the natural pressure of the number of wells producing into the facilities. Applicants state that no distribution or sales of natural gas are made off the facilities, and the facilities are not connected to any transmission facilities owned by Applicants.

Instead, the facilities connect directly with producer-owned facilities in producing fields. It is stated that these facts are all indicia of a gathering system rather than a transmission system.

Applicants submit that these facilities are similar in nature to those recently determined by the Commission to be gathering. For example, it is stated that in *Amerada Hess*, the Commission concluded that 7.4 miles of 8-inch pipeline extending to an interconnection with Columbia Gas Transmission Corporation's interstate pipeline system was gathering, not transmission (Docket No. CP89–1883–000). In addition, Applicants state that even longer facilities commencing at the tailgate of processing plants and extending to interstate transmission facilities were declared to be gathering. Also in *Amerada-Hess*, Applicants point to 17 miles of 8-inch pipeline involving Alabama-Tennessee Natural Gas Company and Sun Operating Limited Partnership (Docket No. CP90–804–000).

Applicants aver that most recently, the Commission determined that certain facilities owned by Tex/Con, an intrastate pipeline, were gathering facilities even though they had previously been treated as intrastate pipeline facilities for which section 311 rates had been established. In Docket No. ST83–627–000, *et al.*, 53 FERC 61,316 (1990), it is stated that the Commission concluded that a system formerly treated as intrastate and for which section 311 fair and equitable rates had been established, consisting of approximately 7 miles of 6-inch pipeline extending from a processing plant to an interconnection with the interstate facilities of Southern Natural Gas Company (Southern), should now be deemed to be gathering in nature. In that order, Applicants state that the Commission described the system as receiving gas from the tailgate of a plant, which gas is produced from five or six wells in a producing area and which gas is delivered to the interstate facilities of Southern. It is further stated that the gas in the facilities at issue was at an operating pressure of 700 psig, and that the Commission acknowledged that Tex/Con neither owned nor sold any of the gas delivered through the system, but was moving gas belonging to third parties.

According to Applicants, the particular situation existing in the Tex/Con case is virtually identical to the facilities at hand: Both systems deliver gas owned by producer third parties over short distances; both systems are not interconnected with any of the other intrastate facilities of applicant; both systems deliver gas to an interconnection with an interstate pipeline; both systems operate at approximately 700 psig; both systems receive gas near the tailgate of a field plant from producer-owned facilities; and neither case involves the sale of gas by the owner of the facilities.

Comment date: April 8, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Black Marlin Pipeline Company

[Docket No. CP91–1442–000]

March 18, 1991.

Take notice that on March 4, 1991, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91–1442–000 an application, as amended on March 7, 1991, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon a firm transportation service provided to Enron Industrial Natural Gas Company (Enron Industrial), formerly Industrial Natural Gas Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin states that it was authorized, among other things, to transport gas under Rate Schedule T–1 for Enron Industrial in an order issued October 17, 1984, in Docket No. CP84–354–000. It is stated that Enron Industrial has notified Black Marlin that it wishes to terminate the Rate Schedule T–1 service. It is indicated that Enron Industrial and Black Marlin have agreed to terminate and abandon the November 8, 1984, transportation service agreement subject to Enron Industrial executing a service agreement for firm transportation under Rate Schedule FTS for the same term and volumes of the Rate Schedule T–1 service agreement. Black Marlin is not proposing the new Rate Schedule FTS service for Enron Industrial in the subject application.

Comment date: April 8, 1991, in accordance with Standard Paragraph F at the end of this notice.

15. Southern Natural Gas Company

[Docket Nos. CP91–1542–000, CP91–1543–000 and CP91–1544–000]

March 18, 1991.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket

certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

[6] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91–1542–000 (3–13–91)	Proctor and Gamble Paper Products (end-user)	3,439 3,439 1,255,235	Various	AL	FT, Firm	ST91–6599, 1–5–91.
CP91–1543–000 (3–13–91)	Pennzoil Exploration and Production (end-user)	5,000 1,000 365,000	Various	Various	IT, Interruptible	ST91–6600, 1–4–91.
CP91–1544–000 (3–13–91)	Union Camp Corporation (end-user)	4,000 4,000 1,460,000	Various	GA	FT, Firm	ST91–6597, 1–5–91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

16. Williston Basin Interstate Pipeline Company

[Docket No. CP91–1501–000]

March 18, 1991.

Take notice that on March 8, 1991, Williston Basin Interstate Pipleine Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91–1501–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an 8-inch pipeline river crossing over the Yellowstone River near the City of Laurel, in Yellowstone County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that due to extensive reconstruction and bridge replacement along U.S. highway Nos. 310 and 212, Williston Basin is required to remove and abandon 500 feet of the 8-inch pipeline river crossing connected to the present highway bridge and remove any appurtenant risers and valving at the approaches to the bridge.

It is also stated that Williston Basin proposes to abondon in-place about 650 feet of 8-inch pipeline which is buried and extends from the sourth river valve to the riser at the south end of the existing highway bridge. It is further stated that the buried portion of the 8-inch pipeline is located in a roadside park area, necessitating its in-place abandonment.

It is said that Williston Basin would be able to meet its service obligations with the existing two underground river crossings.

Comment date: April 8, 1991, in accordance with Standard Paragraph F at the end of this notice.

17. Industrial Gas Corporation, Complainant, Nycotex Gas Transport, Respondent

[Docket No. CP91–1405–000]

March 18, 1991.

Take notice that on February 28, 1991, Industrial Gas Corporation (IGC), 15375 Memorial Drive, Houston, Texas 77079, filed in Docket No. CP91–1405–000, pursuant to rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint against Nycotex Gas Transport (Nycotex) and requests that the Commission institute a formal investigation into the operations of Nycotex to determine whether Nycotex is in violation of the provisions of the Natural Gas Act (NGA), the Natural Gas Policy Act (NGPA), and the Commission's Rules and Regulations thereunder, and to determine what remedial relief is appropriate and in the public interest, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

IGC states that it is an indirect subsidiary of Cabot Oil & Gas Corporation and that it purchases and sells natural gas as a marketer. IGC indicates that much of its gas is transported through its affiliate, Cranberry Pipeline Corporation, an intrastate pipeline in West Virginia. It is stated that Nycotex owns and operates pipeline facilities in the state of West Virginia and that it purchases and sells natural gas either in its own name or through its affiliate, Quinoco Trading Company (Quinoco). IGC states that Nycotex's jurisdictional status is unclear. IGC believes that Nycotex has represented itself to the West Virginia Public Service Commission (WVPSC) as a Hinshaw pipeline. IGC states that Nycotex has represented itself to the Commission as an intrastate pipeline company not subject to the jurisdiction of either the Commission or the WVPSC. IGC claims that Nycotex's actions make it a natural gas company subject to the provisions of the NGA and the jurisdiction of the Commission.

IGC states that it is in direct competition with Nycotex in certain markets in West Virginia. IGC believes that it is in compliance with both state and Federal law but it believes that Nycotex is in flagrant violation of the law which has given it an undeserved and unentitled competitive advantage over IGC and its affiliates and others. IGC states that its specific complaints are as follows:

(1) IGC believes that Nycotex has been engaged in transporting natural gas in interstate commerce without Section 7 authorization. IGC states that Nycotex has claimed that it is an intrastate pipeline performing transportation under Section 311 of the NGPA and has asked the Commission for waivers for its failure to have complied with the Section 311 filing requirements.

(2) IGC believes that Nycotex has been engaged in sales for resale in interstate commerce of natural gas moving through its facilities located in West Virginia. It is stated that no authorizations have been filed for or

received under section 7 authorizing these transactions.

(3) IGC believes that Nycotex has unlawfully engaged in the construction of facilities without section 7 certificate authorization. IGC claims that Nycotex has not been shown to be an intrastate pipeline with rights to construct outside the parameters of section 7 of the NGA. It is further stated that since Nycotex has not met the requirements of §§ 284.3(c) and 157.206(d) of the Regulations, its construction activities are not protected thereunder.

(4) IGC believes that Nycotex has misrepresented its jurisdictional status to be a Hinshaw pipeline to Tennessee Gas Pipeline Company and Columbia Gas Transmission Company in order to secure transportation by those interstate entities pursuant to section 311 of the NGPA and subpart B of part 284 of the Regulations. IGC claims that if Nycotex has misrepresented its status, Nycotex has secured the benefits of section 311 transportation at the same time it has refused to provide IGC (and possibly others) section 311 transportation rights on Nycotex's system.

(5) IGC believes that Nycotex has intentionally filed false and misleading information with the Commission in its proceeding to establish fair and equitable section 311 rates for its pipeline system.

(6) IGC believes that Nycotex has engaged in unlawful discrimination in transportation by its continued failure to provide transportation to IGC and its affiliates while Nycotex has admittedly transported gas for its own affiliate, Quinoco. IGC states that this discrimination is not an historical aberration. IGC further states that despite Nycotex's pending request at the Commission in Docket No. PR90-1 for waiver of the Commission's section 311 Regulations for past non-compliance, Nycotex is avoiding its obligation to provide transportation service on a nondiscriminatory basis.

IGC requests that the Commission fully investigate Nycotex's activities to determine what has occurred, what is the jurisdictional status of Nycotex, and what remedial action is appropriate if NGA violations or Commission Regulation violations have occurred. In this regard, IGC specifically requests that the Commission set this matter for formal investigation, establish procedures for adequate discovery, and provide that a Presiding Administrative law Judge be designated.

Comment date: April 17, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

IGC states that a copy of the complaint has been served on Nycotex. Nycotex's answer to the complaint shall also be due on or before April 17, 1991.

18. K N Energy, Inc.

[Docket No. CP91-1547-000]

March 18, 1991.

Take notice that on March 4, 1991, K N Energy, Inc. (KN), P.O. Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP91-1547-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an exsiting town border station to increase the delivery pressure to accommodate the redelivery of natural gas to the Don Henry Power Plant in Hastings, Nebraska, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N states that Hastings Utilities has requested that K N upgrade its West TBS to increase delivery pressure to allow the Don Henry Power Plant to switch operation of the plant from fuel oil to natural gas. K N states that there will be no change in the total transportation volume presently authorized for delivery through the TBS as a result of the upgrade. K N further states that there will be no adverse impact on K N's peak day and annual deliveries and that K N has sufficient capacity to accomplish the deliveries without detriment or disadvantage to K N's other customers.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

18. Questar Pipeline Company

[Docket No. CP91-1515-000]

March 18, 1991.

Take notice that on March 11, 1991, Questar Pipeline Company (Questar), P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP91-1515-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to install two taps on its transmission pipeline system for delivery of gas to Mountain Fuel Supply Company (MFS), a local distribution company, under Questar's blanket certificate issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to construct and operate two 2-inch taps on jurisdictional laterals in Uinta County, Wyoming, at an estimated cost of $14,360, to effect the delivery of gas to MFS for ultimate sale to the state of Wyoming Port-of-Entry Station near Evanston, Wyoming, and to nearby residential end users. Questar indicates that it proposes to deliver up to approximately 3.0 Dth per hour and that MFS expects peak-day and annual requirements at the new delivery point to approximate 42 Dth per day and 4,478 Dth per year, respectively. Questar states that deliveries to MFS through the proposed taps will not cause Questar to exceed the maximum daily quantities applicable to the service provided to MFS under Questar's FERC Rate Schedules CD-1 (31,414 Dth per day) and X-33 (118,470 Dth per day) and that the installation of the proposed taps will allow Questar to provide expanded service to MFS within existing certificated volumes. Questar also states that it has sufficient pipeline capacity to accomplish the proposed deliveries without detriment or disadvantage to its other customers. Finally, Questar states that its FERC Gas Tariff does not prohibit the addition of new delivery points.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

19. Texas Gas Transmission Corporation and Texas Gas Transmission Corporation

[Docket Nos. CP91-1548-000 [7] and CP91-1549-000]

March 18, 1991.

Take notice that on March 14, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Texas Gas and is included in the attached appendix.

Texas Gas also states that it would provide the service for each shipper under an executed transportation agreement, and that Texas Gas would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No.	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-1548-000	Stellar Gas Company	40,000 28,000 10,220,000	LA, TN, IN, IL, KY, AR, TX, OH, Off TX, Off LA.	LA	2-15-91,IT	ST91-7096-000.
CP91-1549-000	Bishop Pipeline Corporation.	2,595 1,500 730,000	LA, TN, IN, IL, KY, AR, TX, OH, Off TX, Off LA.	LA	2-9-91,IT	ST91-7095-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

20. Florida Gas Transmission Company

[Docket Nos. CP91-1551-000, CP91-1552-000, CP91-1553-000, and CP91-1554-000]

March 18, 1991.

Take notice that on March 14, 1991, Florida Gas Transmission Company (Applicant), Post Office Box 1188, Houston, Texas 77251-1188, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-555-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

APPENDIX

Docket Number (Date Filed)	Shipper Name	Peak Day [1] Avg. Annual	Points of—		Start Up Date, Rate Schedule	Related [2] Dockets
			Receipt	Delivery		
CP91-1551-000 3-14-91	Chesapeake Utilities Corp	20,000 15,000 7,300,000	On LA, Off LA, On TX, Off TX, MS, AL, FL.	FL	3-1-91, ITS-1	ST91-7581-000.
CP91-1552-000 3-14-91	Okaloosa County Natural Gas District	28,000 21,000 10,220,000	On LA, Off LA, On TX, Off TX, MS, AL, FL.	FL	3-2-91, ITS-1	ST91-7596-000.
CP91-1553-000 3-14-91	Florida Public Utilities Co	51,900 38,925 18,943,500	On LA, Off LA, On TX, Off TX, MS, AL, FL.	FL	3-1-91, ITS-1	ST91-7593-000.
CP91-1554-000 3-14-91	Public Service Electric & Gas Co	50,000 37,500 18,250,000	On LA, Off LA, On TX, Off TX, MS, AL, FL.	On LA, Off LA, On TX.	3-1-91, ITS-1	ST91-7595-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

21. Columbia Gas Transmission Corporation, Colorado Interstate Gas Company, Transwestern Pipeline Company and Transwestern Pipeline Company.

[Docket Nos. CP91-1541-000, CP91-1545-000, CP91-1555-000, and CP91-1556-000]

March 18, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public insepction.[9]

Information applicable to each transaction, including the indentity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

APPENDIX A

Docket No. (date filed)	Shipper name (type)	Peak day, average day annual MMBtu	Receipt,[1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1541-000 (3-13-91)	Meridian Marketing & Transmission Corp. (Marketer).	600 480 219,000	OH, MD, PA, NY, VA, KY, WV.	OH, MD, PA, NY, VA, KY, WV.	8-10-91, ITS, Interruptible	ST91-7064 2-10-91.
CP91-1545-000 (3-13-91)	North Central Oil Corp. (Producer).	25,000 10,000 3,650,000	WY	OK	1-8-91, TI-1, Interruptible	ST91-6971 2-1-91.
CP91-1555-000 (3-14-91)	Cibola Corp. (Marketer)	50,000 37,500 18,250,000	AZ, NM, OK, TX	OK	2-25-91, ITS-1, Interruptible	ST91-7591 2-26-91.
CP91-1556-000 (3-14-91)	Vesta Energy Co. (Marketer).	100,000 75,000 36,500,000	AZ, NM, OK, TX	NM, OK, TX	2-113-91, ITS-1, Interruptible	ST91-7592 2-13-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

APPENDIX B

Applicant's Address	Blanket Docket
Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944.	CP86-589, et al.
Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, SE., Charleston, WV 25314.	CP86-240-000
Transwestern Pipeline Co., 1400 Smith Street, P.O. Box 1188, Houston, TX 77251-1188.	CP86-133-000

22. Columbia Gulf Transmission Company

[Docket Nos. CP91-1534-000, CP91-1535-000, and CP91-1536-000]

March 18, 1991.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

APPENDIX

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points [1]	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1534-000 (3-12-91)	Superior Natural Gas Corp. (Marketer)	30,000 10,000 3,650,000	OLA	LA	2-1-91, ITS-2, Interruptible	ST91-7067 2-1-91.
CP91-1535-000 (3-12-91)	Seagull Marketing Service, Inc. (Marketer)	75,000 30,000 10,950,000	OLA, LA	LA, MS	1-25-91, ITS-2, Interruptible	ST91-7041 2-1-91.
CP91-1536-000 (3-12-91)	Tejas Power Corp. (Marketer)	150,000 100,000 36,500,000	OLA, LA	LA, OLA	1-3-91, ITS-2, Interruptible	ST91-6815 2-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

23. Columbia Gulf Transmission Company

[Docket Nos. CP91-1558-000 and CP91-1559-000]

March 18, 1991.

Take notice that on March 14, 1991, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, P.O. Box 683, Houston, Texas 77001, filed 'n the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket

[1] These prior notice requests are not consolidated.

numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: May 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1558-000 ST91 7040-000 (3-14-91)	Superior Natural Gas Corp. (Marketer).	30,000 10,000 3,650,000	Offshore Louisiana, Louisiana.	Louisiana, Tennessee, Mississippi.	6-1-88,[1] ITS-2, Interruptible	2-1-91.
CP91-1559-000 (3-14-91)	Centran Corp. (Marketer)	30,000 10,000 3,650,000	Offshore Louisiana	Louisiana	1-1-91, ITS-2, Interruptible	ST91-7091-000 2-1-91.

[1] As amended.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is requried, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell

Secretary.

[FR Doc. 91-7041 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-80.000, RP91-86-000, and RP91-87-000]

Algonquin Gas Transmission Co.; Conference to Discuss Settlement

March 19, 1991.

Pursuant to the Commission's order issued on March 1, 1991, an informal conference will be held to explore the possibility of settlement of the issue raised in the above-captioned proceedings. All parties should come prepared to discuss settlement, and the parties shuld be represented by principals who have the authority to commit to a settlement. The conference will be held on Friday, April 12, 1991 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend

Lois D. Cashell.

Secretary.

[FR Doc. 91-7042 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-78-000]

Midwestern Gas Transmission Co.; Conference to Discuss Settlement

March 19, 1991.

Pursuant to the Commission's order issued on March 1, 1991, an informal conference will be held to explore the possibility of settlement of the issues raised in the above-captioned proceeding. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Tuesday, April 16, 1991 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7043 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-116-000]

Raton Gas Transmission Co.; Change in Rates

March 19, 1991.

Take notice that Raton Gas Transmission Company (Raton) on March 13, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of Nineteenth Revised Sheet No. 4. Raton

state that the change in rate is for jurisdictional sales and service.

Raton states that this filing is a minor rate filing under Commission Regulations. Raton states that these rates are based on operating data for the year ending December 31, 1990.

Raton states that copies of Raton's filing are on file with the Commission and are available for public inspection. Raton further states that in addition, copies have been served on Raton's two customers and the New Mexico Public Service Commission.

Any peson desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or portests should be filed on or before March 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7045 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-72-000, RP91-73-000, RP91-74-000, and RP91-75-000]

Texas Eastern Transmission Corp.; Conference to Discuss Settlement

March 19, 1991.

Pursuant to the Commission's order issued on February 14, 1991, an informal conference will be held to explore the possibility of settlement of the issues raised in the above-captioned proceedings. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Thursday, April 11, 1991 at 1 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7044 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-162-004]

Ringwood Gathering Co.; Compliance Filing

March 19, 1991.

Take notice that on September 24, 1990, Ringwood Gathering Company (Ringwood) filed in compliance with the Commission's order dated August 1, 1990 regarding settlement in the above-captioned docket the following tariff sheets:

Thirteenth Revised Sheet No. 4 Superceding Twelfth Revised Sheet No. 4.
Second Substitute Fifty-Third Sheet Quarterly PGA-1 Superceding Fifty-Second Sheet Quarterly PGA-1.
Substitute Original Sheet No. 4C Superceding Second Substitute Fifty-Third Sheet Quarterly PGA-1.
Substitute First Revised Sheet No. 4C Superceding Substitute Original Sheet No. 4C.
Substitute Second Revised Sheet No. 4C Superceding Substitute First Revised Sheet No. 4C.
Substitute Third Revised Sheet No. 4C Superceding Substitute Second Revised Sheet No. 4C.
Third Revised Sheet No. 4-A Superceding Second Revised Sheet No. 4-A.
Third Revised Sheet No. 4-B Superceding Second Revised Sheet No. 4-B.
Second Revised Sheet No. 89 Superceding Substitute First Revised Sheet No. 89.
First Revised Sheet No. 89-A Superceding Substitute Original Sheet No. 89-A.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such protests should be filed on or before March 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7046 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. Rp89-162-005]

Ringwood Gathering Co.; Compliance Filing

March 19, 1991.

Take notice that on November 2, 1990, Ringwood Gathering Company (Ringwood) filed the following tariff sheets:

Second Revised Sheet No. 89 Superceding First Substitute First Revised Sheet No. 89.
First Revised Sheet No. 89-A to Superceding First Substitute Original Sheet No. 89-A.

Ringwood states that the tariff sheets correct the pagination of tariff sheets filed on September 24, 1990 to comply with the Commission's order of August 1, 1990, in this docket.

Ringwood requests any waivers necessary to make the above corrections part of the September 24, 1990 compliance filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such protests should be filed on or before March 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7047 Filed 3-25-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3916-8]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice is to inform the public and interested utility units that EPA has prepared guidance and a submittal form for the notification required section 403(a)(1) of the Clean Air Act Amendments of 1990 regarding repowering extensions. The extension (for which application must be made by December 31, 1997) allows units eligible and complying with section 409 to defer the emissions limitations requirements of Phase II of the Acid Rain program until the unit is removed from operation to install repowering technology, but no later than December 31, 2003. The

notification discussed today is not binding upon the units.

DATES: Units which believe they are eligible for the repowering extension and are considering applying for the extension must send the appropriate submittal form (or sufficient notification as outlined in the submittal form) to EPA by March 31, 1991.

ADDRESSES: Copies of the guidance and submittal form are available upon request at the following location: U.S. Environmental Protection Agency, Acid Rain Division, ANR–445, 401 M Street SW., Washington, DC 20460, Attn: Repowering. Completed forms may be sent to the same location.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 475–7242, (FTS) 475–7242.

SUPPLEMENTARY INFORMATION: Acid rain occurs when sulfur dioxide (S02) and nitrogen oxide (NOx) emission are transformed in the atmosphere and return to earth in rain, fog or snow. Approximately 20 million tons of SO2 are emitted annually by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The 1990 Clean Air Act Amendments will result in a permanent 10 million ton reduction in sulfur dioxide (SO2) emissions from 1980 levels. The Act is implemented in two phases. Phase I runs from 1995 to 2000 and affects 261 units which are specifically listed in the Act. Phase II begins in 2000, is permanent, and affects most utility units that emit SO2.

To be in compliance with the Act, affected sources must limit their SO2 emissions to a level specified in the Act and may not emit more tons of SO2 than they hold in "allowances." An "allowance" provides the unit with the authority to emit one ton of SO2 in a given year. The Act provides a method for EPA to allocate allowances to sources. Through an innovative market approach, these allowances are transferable, allowing market forces to govern their ultimate use.

The repowering extension provides a method for higher-emitting units (regulated under sections 405 (b) and (c)) to modify their operations in order to reduce emissions and comply with Phase II requirements. The extension is applicable only to units which are subject to requirements under sections 405 (b) and (c) and which make the proper demonstrations according to section 409.

EPA has developed guidance which provides the legal interpretations and mathematical equations necessary for a source to decide whether it may apply for the repowering extension, to understand EPA's current interpretation of how the provisions apply, and to decide whether to submit a notification to EPA pursuant to section 403(a)(1). To ensure adequate notice to all potentially eligible units, EPA has chosen to provide this notice.

The requirements of the Paperwork Reduction Act are not applicable to this submittal form because the form does not go beyond the necessary notification required by the Act. Also, the guidance and submittal form are, in fact, designed to reduce the level of effort expended by utilities in complying with the Act. The submittal of notification to EPA by March 31, 1991 is mandated under the Clean Air Act Amendments of 1990.

Dated: March 20, 1991.

Michael Shapiro

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–7108 Filed 3–25–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3917–1]

Workshop on Interim Guidance for Dermal Exposure Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Expert Panel Workshop.

SUMMARY: This notice announces an expert panel workshop to be held by the Exposure Assessment Group (EAG) of the U.S. Environmental Protection Agency's (EPA) Office of Health and Environmental Assessment to address unresolved issues concerning the document titled, Interim Guidance for Dermal Exposure Assessment. The workshop will be held at the Ramada Renaissance Hotel Washington Dulles, 13869 Park Center Road (Route 28 and McLearen Road), Herndon, Virginia 22071.

DATES: The workshop will be held on April 2, 1991, from 8:30 a.m. until 5 p.m., and April 3 from 8:30 a.m. until 4 p.m. Members of the public are invited to attend as observers. Space is limited and advanced registration is required.

ADDRESSES: ILSI Risk Science Institute (ILSI–RSI), under a cooperative agreement with EPA, is providing logistical support and co-chairing the workshop. To attend the workshop as an observer, call Diane Dalisera, ILSI Risk Science Institute, 1126 Sixteenth Street NW., Washington, DC 20036; telephone (202) 659–3306.

FOR FURTHER INFORMATION CONTACT: Kim Hoang, U.S. Environmental Protection Agency, ORA, 75 Hawthorne Street, San Francisco, CA 94105; telephone (415) 744–1023; FTS: 484–1023; fax (415) 744–2499, or John Schaum, Office of Health and Environmental Assessment, RD–689, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 382–5988 or FTS 382–5988.

SUPPLEMENTAL INFORMATION: Dermal exposure is a major route of exposure for humans to a host of toxicants in diverse environments. However, it is the least understood and most uncertain area in the exposure assessment field. The purpose of the draft document, Interim Guidance for Dermal Exposure Assessment, is to provide guidance to EPA program and regional offices on how to conduct dermal exposure assessments and to improve the scientific bases for approaching this aspect of risk assessment. Guidance is needed to assist exposure/risk assessors in determining when dermal exposure may be a route of concern, and to assist in making preliminary estimates of dermal exposure and absorption. The document describes the pertinent input parameters and discusses their practical use in dermal exposure assessment. Specifically, the document:

—Summarizes the available state of knowledge and evaluates the validity of existing methods and techniques;
—Clarifies the capabilities and limitations of these methods and elaborates upon the uncertainties associated with them;
—Provides step-by-step guidance to dermal exposure assessment;
—Describes the use of dermal permeability data including estimation techniques, the use of data reported as percent of applied dose absorbed, and the use of default values when experimental or empirical data are lacking; and
—Provides a data base of dermal permeability coefficient values.

The exposure/risk assessor should be aware, however, that a number of significant uncertainties remain, such as assessment of dermal contact with soil and vapors, and the absence of experimentally derived permeability or flux values for many of the compounds associated with dermal exposure, including, for example, those compounds commonly encountered at hazardous waste sites. EPA has requested ILSI–RSI's assistance in assembling an Expert Scientific Panel to

discuss these and other issues at the workshop.

Dated March 19, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-7106 Filed 3-25-91; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board [FRL-3916-9] Executive Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a public meeting of the Executive Committee of the Science Advisory Board will be held on April 18 and 19, 1991 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC in the Administrator's Conference Room 1101.

The meeting will start at 8:30 a.m. on April 18 and will adjourn no later than 1 p.m. April 19. The main purpose of the meeting is to review proposed SAB reports from the standing committees.

The Drinking Water Committee (DWC) will present three items: A commentary requesting that the Agency rank their projects in the area of drinking water quality according to relative quantitative risk; a review of the Agency's proposed research plan for arsenic; and a review of the Agency's document on Trihalomethanes.

The Environmental Engineering (EEC) Committee will present two reports: One on the hazards associated with recycling of municipal solid waste and another on the selection and use of computer models in the Agency, particularly in the Office of Solid Waste and Emergency Response.

The Environmental Health Committee (EHC) will present three reports for review: One on Inhalation Reference Concentrations (RfC), another on Occupational Exposure Limits (OEL), and a third on addressing the essentiality of certain metals in a risk assessment context.

The Indoor Air Quality and Total Human Exposure Committee (IAQTHEC) will present their review of the Office of Research and Development's Draft Report: "Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children".

The Research Strategies Advisory Committee (RSAC) will present its report on the Reveiw of the FY92 President's Budget for Research and Development that was presented before Congress on March 12. In addition, the Scientific and Technological Achievement Awards Subcommittee of the RSAC will report on its review for nominations for the Agency's Scientific and Technological Achievement Awards, established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their R&D activities. The recipients of the awards will not be disclosed.

The Committee will be briefed by the Agency on its response to and progress in implementing the recommendations in the SAB report "Reducing Risk: Setting Priorities and Strategies for Environmental Protection".

The Committee will discuss ways in which it can be of assistance to the Agency in updating risk assessment guidelines.

The Committee will also discuss approaches to interacting with other advisory groups.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 by April 12, 1991.

Dated: March 19, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91-7107 Filed 3-25-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3916-7]

CERCLA Administrative Consent Order; South Brunswick Landfill Site, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Administrative consent order with Browning-Ferris Industries of South Jersey, Inc. for recovery of response costs, statutory penalties and punitive damages—South Brunswick Landfill Superfund Site: request for comments.

The Environmental Protection Agency (EPA) Region II announces its intent to issue a proposed Administrative Consent Order (Consent Order), pursuant to sections 106, 107, 122(h) and 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, 9622(h) and 9622(i), between EPA and Browning-Ferris Industries of South Jersey, Inc. (BFISJ), for partial recovery of response costs incurred at or in connection with the South Brunswick Landfill Superfund Site (Site) in South Brunswick, New Jersey, and for settlement of certain EPA claims for penalties and statutory damages.

The proposed Consent Order provides for recovery of $58,957.72 in response costs, and for payment by BFISJ of $600,000 to resolve BFISJ's liability for statutory penalties and punitive damages for past violations of an EPA Unilateral Administrative Order (Unilateral Order) issued on March 6, 1989 (Index No. II-CERCLA-90104) for post-remedial monitoring at the Site. EPA reserves the right to recover for any liability for response costs beyond the amounts paid under the Consent Order, for injunctive relief, and for any violations of EPA's Unilateral Order which may occur after the effective date of the Consent Order. The Consent Order further provides for payment by BFISJ of future oversight costs on demand. The Consent Order does not provide for conduct of response activity at the Site, since post-remedial monitoring at the Site is expected to be conducted by BFISJ under the terms of the existing Unilateral Order.

DATES: EPA will receive comments relating to the proposed consent order on or before April 25, 1991.

ADDRESSES: Comments may be mailed to Douglas R. Blazey, Regional Counsel, U.S. Environmental Protection Agency, Attention: Chief, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York, 10278. The proposed Consent Order may be examined at the Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, room 309, 26 Federal Plaza, New York, New York 10278. A copy of the proposed Consent Order may be obtained in person or by mail from the Office of Regional Counsel, New Jersey Superfund Branch, U.S. Environmental Protection Agency, Region II, room 309, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William C. Tucker, Assistant Regional Counsel, New Jersey Superfund Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, room 309, New York, New York 10278, telephone: (212) 264-3268.

Dated: March 13, 1991.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 91-7105 Filed 3-25-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59295; FRL 3885-9]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91–11, April 11, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS–59295)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91–11

Close of Review Period. April 25, 1991.

Manufacturer. Confidential.

Chemical. (G) Polyester polymer.

Use/Production. (S) Electrical insulating varnish. Prod. range: Confidential.

Dated: March 19, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–7103 Filed 3–25–91 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants; Forest International, et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Forest International, 156015 146th Avenue, Jamaica, NY 11434, Officer: Janice Davey, Sole Proprietor.

Theo's Pizza Inc. dba Caribe Consolidators, 8244 NW 68th Street, Miami, FL 33166, Officers: Theodore A. Gonzalez, Jr., President/Director, Suzette C. Gonzalez, Treasury/Director.

Globaltrans Corporation, 1400 S. Joyce St., suite B–214, Arlington, VA 22202, Officer: Angel M. Feliciano, President.

BMA International Traders and Forwarders, Inc., 250 So. Maple Ave. #B, So. San Francisco, CA 94080, Officer: Benjamin Arcayena, President.

Secure Freight Systems (Washington) Ltd., Sea-Tac Airport, 2580 S. 156th St., Bldg. A, rm. 201, Seattle, WA 98158, Officers: Mr. Ambrose Mak, President, Miss Bonnie Chu, Dir./Chief Operations Officer, Mr. Perry NG, Director.

C. Itoh Express (America) Inc., 335 Madison Avenue, New York, NY 10017, Officers: Hisoshi Nakamura, Chairman, Kiyoji Hasegawa, Vice Chairman, Hiroshi Morita, Director, Setsuzo Kohsaka, Director, K. Fukushima, President/Director, M. Ohmori, Treasurer.

Special Cargo Services International, Inc., 2510 Peel Avenue, Orlando, FL 32806, Officers: Daniel P. Stephens, President/Director, John J. Yarwood, Vice President of Operations, Van Howell, Treasurer, Mary Howell, Secretary.

Frontier International Shipping Company, Inc., 70 Prospect Park SW., Apt. No 3D, Brooklyn, NY 11215, Officers: Marc S. Lussier, President/Director, Sueanne Wojick, Vice President, Laura Lussier, Secretary/Treasurer/Director.

A.L. Tokin Co., 2822–60th Street, Court NW., Gig Harbor, WA 98335, Officer: Albert L. Tokin, Jr., Sole Proprietor.

Transport International Services, 5533 Jessamine, Houston, TX 77081, Officer: William M. Zeller, Sole Proprietor.

Gulf-Ocean Shipping Corporation, 1560 West Bay Area Blvd., suite 260, Friendswood, TX 77546, Officers: Lettye Bake Warwick, President/Director, Jimmy Joseph Babineaux, Vice President/Director, Robert Bennett Walls, Secretary/Treasurer/Director.

Argosy Line, Inc., 7749 E. 11th Street, Tulsa, OK 74112, Officers: Joe Earl Brunson, Clifford Randal Honeycutt, President, Elizabeth Honeycutt, Secretary/Treasurer.

C V International, Inc., #16 Koger Executive Center, suite 100, Norfolk, VA 23502, Officers: E. L. Vanderberry, President/Director, B. Wayne Coleman, Executive Vice President/Director, Elizabeth A. Vanderberry, Treasurer, Judith A. Coleman, Secretary.

International Cargo Services, Inc., 1079 Carriage Hill Parkway, Annapolis, MD 21401, Officers: Peter Lunde Johnson, President/Treasurer/Director, Kim Hue Johnson, Vice President/Secretary/Treasurer, Director.

Mountain Air Delivery, 702 Spice Island Drive, Sparks, Nevada 82931, Officers: Gerald W. Griffin, Jr., President/Director, Marna W. Griffin, Secretary/Treasurer/Director.

Dated: March 20, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–7031 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

FCNB Corp; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Corp, Frederick, Maryland; to engage *de novo* through its subsidiary, FCNB Federal Savings Bank, Frederick, Maryland, which would acquire three branches of Equitable Federal Savings Bank, Wheaton, Maryland, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7054 Filed 3-25-91; 8:45 am]

BILLING CODE 6210-01-F

Prairie Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Prairie Bancorp, Inc., Manlius, Illinois; to acquire 77 percent of the voting shares of Bank of Ladd, Ladd, Illinois.

2. Sandwich Banco, Inc., DeKalb, Illinois; to acquire 100 percent of the voting shares of Colonial Bank of Granite City, Granite City, Illinois, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty National Bancorp, Inc., Louisville, Kentucky; to acquire 100 percent of the voting shares of Bank of Lexington & Trust Company, Inc., Lexington, Kentucky.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The North Platte Corporation, Torrington, Wyoming; to acquire 100 percent of the preferred shares of The Weld State Company, Fort Lupton, Colorado.

2. The Weld State Company, Fort Lupton, Colorado; to acquire First Security Bank of Berthoud, Berthoud, Colorado, a *de novo* bank, and acquire the assets and assume the liabilities of Berthoud National Bank, Berthoud, Colorado.

Board of Governors of the Federal Reserve System, March 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7055 Filed 3-25-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested exemption from trade regulation rule.

SUMMARY: The commission is requesting public comment with respect to a request from Mercedes-Benz of North America, Inc. for an exemption from the requirements of the franchise rule.

DATES: Written comments will be accepted until May 28, 1991.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition and the franchise rule should be directed to the Public Reference Branch, room 130, (202) 326-2222.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Attorney, PC-H-238, Federal Trade Commission, Washington, DC 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (16 CFR part 436) ("the Rule"). In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, room 130, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule. The Commission has granted exemptions from the Franchise Rule on four previous occasions to a number of automobile manufacturers, importers, and distributors.[1]

[1]Exemptions have been granted to the following automotive petitioners: The Saturn Corporation, 54

Continued

Mercedes-Benz of North America, Inc., a wholly-owned subsidiary of the Daimler-Benz group, filed a petition for exemption pursuant to section 18(g) on June 12, 1990. Briefly stated, Petitioner alleges that an exemption should be granted to Mercedes-Benz of North America, Inc. because: (1) Mercedes-Benz dealers will be extremely sophisticated businesspersons; (2) prospective dealers and their advisors will have more than adequate time to review the dealer agreement and other information; (3) given their experience and sophistication, prospective dealers will be well-acquainted with the automobile industry and all relevant facts about the dealership; (4) the public comments in prior exemption proceedings for automobile dealerships have not opposed the exemptions granted; and (5) failure to grant the petition would place Mercedes-Benz of North America, Inc. at a competitive disadvantage in view of the other exemptions the Commission has granted. The full text of the petition can be obtained from the FTC Public Reference Branch, Room 130, upon request. Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the Commission hereby provides notice of, and seeks comments regarding, the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views or arguments on any issues of fact, law or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

In assessing the present exemption request, the Commission would like comments on all relevant issues germane to the proceeding, including the following: (1) Is there any evidence to indicate that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of motor vehicle franchises? (2) If not, is it in the public interest to exempt it from coverage under the Franchise Rule?

Comments should be identified as "Mercedes-Benz Franchise Rule Exemption Comment," and two copies should be submitted, if possible.

FR 1446 (Jan. 13, 1989); Austin Rover Cars of North America, 52 FR 6612 (Mar. 4, 1987); Volkswagen of America, Inc. and Twelve Independent Distributors of Subaru, Toyota and Volkswagen Motor Vehicles, 49 FR 13677 (Apr. 6, 1984); Automobile Importers of America Inc. and American Motors Corporation, 45 FR 51763 (Aug. 5, 1980).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-7114 Filed 3-25-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9227]

Chain Pharmacy Association of New York State, Inc.; Fay's Incorporated; Kinney Drugs, Inc.; and James E. Krahulec; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the four consent agreements, accepted subject to final Commission approval, would prohibit, among other things, two pharmacy chains, a trade association, and an individual from boycotting New York State's Employees Prescription Plan in order to force the program to increase its reimbursement rates for pharmacies that provide prescriptions to state employees.

DATES: Comments must be received on or before May 28, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S-3308, Washington, DC 20580. (202) 326-2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Order To Cease and Desist

In the matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Drug Company, Inc., a corporation; Kinney Drugs, Inc., a corporation; Melville Corporation, a corporation; Peterson Drug Company of North Chili, New York, Inc., a corporation; Rite Aid Corporation, a corporation; and James E. Krahulec, an individual.

The agreement herein, by and between Chain Pharmacy Association of New York State, Inc., a corporation, hereinafter sometimes referred to as "Chain Association" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Chain Pharmacy Association of New York State, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 28 Fairway Lane, in the City of Schenectady, State of New York 12304.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said

copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. *Chain Association* means the Chain Pharmacy Association of New York, Inc., and its directors, committees, officers, representatives, agents, employees, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and any of the above which contract with the State of New York or other governmental units to provide health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words *subsidiary, affiliate,* and *joint venture* refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Chain Association, directly, indirectly, or through any corporate, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, continuing a meeting of representatives of pharmacy firms at which any person makes any statement concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

C. For a period of ten (10) years after the date this order becomes final, communicating to any pharmacist or pharmacy firm any information concerning any other pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

D. For a period of eight (8) years after the date this order becomes final, providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of participating in any existing or proposed participation agreement. However, nothing in this paragraph shall prohibit Chain Association from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers; and

Provided that nothing in this Order shall be construed to prevent Chain Association from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

III

It is further ordered that Chain Association:

A. Distribute by first-class mail a copy of this Order and the accompanying complaint to each of its members within thirty (30) days after the date this order becomes final;

B. Publish this order and the accompanying complaint in an issue of the Chain Association newsletter or in any successor publication published no later than sixty (60) days after the date this order becomes final, in the same type size normally used for articles that are published in the Chain Association Newsletter or successor publication;

C. For a period of five (5) years after the date this order becomes final, provide each new Chain Association member with a copy of this order at the time the member is accepted into membership;

D. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Chain Association, require, setting forth in detail the manner and form in which it has complied and is complying with the order;

E. For a period of five (5) years after the date this order becomes final, maintain and make available to

Commission staff for inspection and copying upon in reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by parts II and III of this order, including, but not limited to, all documents generated by Chain Association or that come into Chain Association's possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

F. Notify the Commission at least thirty (30) days prior to any proposed change in Chain Association such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, or any other change that may affect compliance with this order.

Agreement Containing Order To Cease and Desist

In the Matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Incorporated, a corporation; Kinney Drugs, Inc., a corporation; Melville Corporation, a corporation; Peterson Drug Company of North Chili, New York, Inc., a corporation; Rite Aid Corporation, a corporation; and James E. Krahulec, an individual.

The agreement herein, by and between Fay's Incorporated, a corporation, hereinafter sometimes referred to as "Fay's" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Fay's Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 7245 Henry Clay Boulevard, Liverpool, New York 13088–3571.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of the order, the following definitions shall apply:

A. *Fay's* means Fay's Incorporated, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Fay's. The words *subsidiary, affiliate,* and *joint venture* refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Fay's, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or

affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Fay's with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Fay's and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into refusing to enter into, -1 participating in, or withdrawing from any existing or proposed participation agreement into which Fay's and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Fay's from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer; or

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III

It is further ordered that Fay's:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Fay's' behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

IV

It is further ordered that Fay's:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Fay's, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all documents generated by Fay's or that come into Fay's possession, custody, or control regardless of source, that embody, discuss or refer to the decision or upon which Fay's relies in deciding whether to enter into any participation agreement in which Fay's participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Fay's such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

Agreement Containing Order to Cease and Desist

In the matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Incorporated, a corporation; Kinney Drugs, Inc., a corporation; Melville Corporation, a corporation; Peterson Drug Company of North Chili, New York, Inc., a corporation; Rite Aid Corporation, a corporation; and James E. Krahulec, an individual.

The agreement herein, by and between Kinney Drugs, Inc., a corporation, hereinafter sometimes referred to as "Kinney" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Kinney Drugs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 29 Main Street, in the City of Gouverneur, State of New York 13642.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to control challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease

and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of the order, the following definitions shall apply:

A. *Kinney* means Kinney Drugs, Inc., its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Kinney. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Kinney, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) Boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Kinney with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Kinney and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Kinney and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Kinney from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer; or

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III

It is further ordered that Kinney:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Kinney's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

IV

It is further ordered that Kinney:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Kinney, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all documents generated by Kinney or that come into Kinney's possession, custody,

or control regardless of source, that embody, discuss or refer to the decision or upon which Kinney relies in deciding whether to enter into any participation agreement in which Kinney participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Kinney such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

Agreement Containing Order To Cease and Desist

In the matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Incorporated, a corporation; Kinney Drugs, Inc., a corporation; Melville Corporation, a corporation; Peterson Drug Company of North Chili, New York, Inc., a corporation; Rite Aid Corporation, a corporation; and James E. Krakulec, an individual.

The agreement herein, by and between James E. Krahulec, an individual, hereinafter sometimes referred to as "Mr. Krahulec" or respondent, by his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Krahulec is an individual employed by Rite Aid Corporation in Rite Aid Corporation's principal offices at Railroad Ave. and Trindle Road, Shiremantown, Pennsylvania 17011.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of the order, the following definitions shall apply:

A. *Mr. Krahulec* means James E. Krahulec, his agents and employees;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words *subsidiary, affiliate,* and *joint venture* refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Mr. Krahulec, directly, indirectly, or through any device, in or in connection with his activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1)

Boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, organizing, sponsoring, facilitating, or attending a formal or informal meeting of representatives of pharmacy firms that Mr. Krahulec expects or reasonably should expect will facilitate communications, or continuing to conduct a formal or informal meeting of representatives of pharmacy firms at which two persons make any statement, concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

C. For a period of ten (10) years after the date this order becomes final, communicating in any way to or soliciting from any pharmacy firm other than Mr. Krahulec's employer any information concerning any pharmacy firm's intention or decision with respect to entering into, threatening to refuse to enter into, refusing to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; and

D. For a period of eight (8) years after the date this order becomes final, advising any pharmacist not employed by Mr. Krahulec's employer or any pharmacy firm other than Mr. Krahulec's employer with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Mr. Krahulec's employer and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Mr. Krahulec from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding; or

(2) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III

It is further ordered that Mr. Krahulec:

A. Shall file a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Mr. Krahulec, require, setting forth in detail the manner and form in which he has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by part II of the order, including, but not limited to, all documents generated by Mr. Krahulec or that come into his possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

C. Notify the Commission within thirty (30) days of any change in Mr. Krahulec's employer or of any other change that may affect compliance with the order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to proposed consent orders from Chain Pharmacy Association of New York State, Inc., Fay's Incorporated, Kinney Drugs, Inc. and James E. Krahulec ("respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

Description of Complaint

A complaint that the Commission issued on April 19, 1989, alleges that respondents agreed with others to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreement coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts.

Respondent Chain Association is composed of 14 firms engaged in the retail sale of prescription drugs. Respondent Fay's operated approximately 110 to 120 stores in New York State in 1986. Respondent Kinney operated approximately 23 pharmacies in New York State in 1986. Fay's and Kinney were both members of the Chain Association. Respondent Krahulec was Vice President, Government and Trade Relations of Rite Aid Corp., a member of the Chain Association in 1986. The Commission accepted for public comment an agreement containing a consent order with Rite Aid in settlement of this matter on October 22, 1990.

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescription, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, respondents Fay's and Kinney participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Respondents Fay's and Kinney purchased prescription drugs at an average cost that was below the level of reimbursement for ingredients costs that was offered. Respondents Fay's and Kinney each would have suffered a loss of customers if its competitors had participated in the program at a time when it was not participating.

The complaint alleges that during or before March 1986, the State of New York informed respondent Chain Association of the proposed terms of the Program. The Chain Association then informed the other respondents and other pharmacies of the proposed terms. The Chain Association told its members that the extent to which pharmacies participated in the Program could affect state officials' consideration of the Program's reimbursement level. The Chain Association held meetings at which some members stated that they would not participate in the Program. Respondents Fay's and Kinney and

other pharmacy firms also discussed their intentions regarding participation in the Program outside of Chain Association meetings. Respondents Chain Association and Krahulec communicated, to respondents Fay's and Kinney and other pharmacy firms, information regarding the intentions of Chain Association members concerning participation in the Program. The complaint further alleges that through these exchanges of information and other acts, and the activities of respondents Chain Association and Krahulec, respondents Fay's and Kinney agreed with others to refuse to participate in the Program to coerce the State of New York to increase the level of reimbursement under the Program.

The complaint alleges that the agreement to refuse to participate in the Program injured consumers in New York State by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the conspiracy by respondents and others forced New York State to pay substantial additional sums for prescription drugs provided to beneficiaries of the Program.

Description of the Proposed Consent Orders

The proposed orders against respondents Fay's, Kinney, and Krahulec would require each to cease and desist from entering into any agreement among pharmacies to withdraw from or refuse to enter into any third-party prescription drug plan. The proposed order against respondent Chain Association would require it to cease and desist from organizing or encouraging any agreement among pharmacies to withdraw from or refuse to enter into a third-party plan.

The proposed orders against respondents Chain Association and Krahulec would also prohibit them, for a period of ten years, from holding meetings at which its members exchange information concerning their intentions about participation in a third-party plan.

The proposed orders would also prohibit each respondent, for a period of ten years, from communicating to any pharmacy the respondent's decision or intention to enter into or refuse to enter into any third-party plan. The proposed orders would also prohibit each respondent, for a period of eight years, from advising any pharmacy with respect to entering into or refusing to enter into any third-party plan.

The orders would not prohibit respondents from petitioning the government on matters involving legislation, rules, or procedures. The orders also would not prohibit respondents Fay's and Kinney from jointly undertaking with other pharmacy firms to provide prescription drug services so long as the third-party payer requests in writing that the respondent do so. Finally, the orders would permit respondents Fay's, Kinney, and Krahulec making truthful and nondeceptive public statements about existing or proposed third-party plans.

The orders would permit these respondents to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, a respondent could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott a third-party prescription plan.

The orders would require respondents Chain Association, Fay's, and Kinney each to distribute a copy of the order to certain employees and others, to file compliance reports, to retain certain documents, and to notify the Commission of certain changes in its corporate structure. The orders would require respondent Krahulec to file compliance reports, to retain certain documents, and to notify the Commission of changes that might affect compliance.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement purposes only and do not constitute an admission by either respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 91-7116 Filed 3-25-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3326 and C-3327]

Richard Crew and Robert Francis; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent orders prohibit, among other things, two individuals, who formed a company (AmEuro Sciences International, Inc.) to distribute the Diet Patch, from making unsubstantiated efficacy claims for any product or service and from misrepresenting that a paid advertisement is an independent program. In addition, the orders prohibit the respondents from disseminating or broadcasting "The Michael Reagan Show".

DATES: Complaints and Orders issued March 4, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Tracy Thorleifson, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 553-4656.

SUPPLEMENTARY INFORMATION: On Thursday, January 3, 1991, there was published in the **Federal Register**, 56 FR 272, proposed consent agreements with analysis In the Matter of Richard Crew and Robert Francis, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the orders.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreements, made its jurisdictional findings and entered its orders to cease and desist, as set forth in the proposed consent agreements, in disposition of the proceedings.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 91-7117 Filed 3-25-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3175]

The Perrier Group of America, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

[1] Copies of the Complaints and the Decision and Orders are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Connecticut-based company and its subsidiary from making false claims that any mineral water it sells is unprocessed or unfiltered, or regarding the manner by which the water is carbonated, in the future.

DATES: Comments must be received on or before May 28, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of The Perrier Group of America, Inc., and Great Waters of France, Inc., corporations.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Perrier Group of America, Inc., and Great Waters of France, Inc., corporations ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between The Perrier Group of America, Inc., and Great Waters of France, Inc., by their duly authorized officers, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents, The Perrier Group of America, Inc., and Great Waters of France, Inc., are Delaware corporations with their office and principal place of business located at 777 W. Putnam Avenue, Greenwich, Connecticut 06830.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released in accordance with Section 2.34 of the Commission's Rules. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto, except that proposed respondents do not waive any claim of confidentiality for any information submitted in Commission File No. 902 3175. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the Agreement may be used to vary or contradict the terms of the Order.

7. By its final acceptance of this Agreement, the Commission waives its right to commence a civil action for consumer redress against proposed respondents, their successors and assigns, under sections 11 and 19 of the Federal Trade Commission Act, as amended, 15 U.S.C. 53 and 57b, with respect to any acts or practices alleged in the attached draft Complaint.

8. Proposed respondents have read the attached draft Complaint and the following Order. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

Mineral water means any water that is placed in a sealed container or package and offered for sale for human consumption or any other consumer use and is any of the following:

(1) From Source Perrier in Vergeze, France,

(2) Labeled as a mineral water, or

(3) Contains not less than 500 parts per million total dissolved solids,

provided that if "mineral water" is defined by federal law, or by regulation of the U.S. Food and Drug Administration, such definition shall replace this subparagraph (3).

Processing means treating, filtering, altering, adding any substance to, or removing any substance from, any mineral water or any ingredient or constituent of any mineral water, through the application of any mechanical or chemical means.

I.

It is ordered that respondents The Perrier Group of America, Inc., and Great Waters of France, Inc., corporations, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any mineral water in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

A. The existence or extent of processing of any such water, or of any ingredient or constituent of such water, or

B. The manner by which the water is carbonated.

II.

It is further ordered that respondents shall distribute a copy of this Order to each of their operating divisions and to each of their officers, directors, agents, or employees having sales, advertising, or policy responsibilities with respect to the subject matter of this Order.

III.

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary, or any other change in the corporations that may affect compliance obligations under this Order.

IV.

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Great Waters of France, Inc., a Delaware corporation, and The Perrier Group of America, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for Perrier mineral water. Great Waters of France, Inc. is the corporation that markets and distributes Perrier water in the United States. Great Waters is a wholly-owned subsidiary of The Perrier Group of America, Inc. The Commission's complaint in this matter charges Great Waters and the Perrier Group with disseminating advertisements containing false and misleading representations concerning Perrier mineral water. The complaint alleges that the respondents represented that Perrier mineral water is not processed, treated, or filtered before being bottled. In fact, the complaint alleges, these representations are false or misleading because Perrier water is created by separately extracting carbonation and water from the earth, filtering the carbonation to remove certain substances, and then combining the water and carbonation in the plant before bottling the final product.

The consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondents, in connection with the advertising, sale, or distribution of any mineral water, to cease misrepresenting the existence or extent of processing of any such water (including any ingredients of the water), or the manner by which the water is carbonated. The order defines "mineral water" to include any water that the respondents sell as mineral water, any water from Source Perrier in Vergeze, France (the source of Perrier water), or any water that contains not less than 500 parts per million total dissolved solids. The definition provides that if "mineral water" is defined by federal law or by regulation of the U.S. Food and Drug Administration, then such definition shall apply instead of the parts per million requirement. The order defines "processing" as: "Treating, filtering, altering, adding any substance to, or removing any substance from, any mineral water or any ingredient or constituent of any mineral water, through the application of any mechanical or chemical means."

Parts II, III, and IV of the order are standard order provisions requiring respondents to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Andrew J. Strenio, Jr. Great Waters of France, Inc. (Perrier)

[File No. 902 3175]

The Commission has reason to believe respondents' representations (that Perrier water is not processed or filtered before being bottled) are false and misleading. Accordingly, I concur in the decision to accept the proposed consent agreement for public comment. I write separately, however, to highlight two aspects of this matter.

First, the proposed order covers only mineral waters rather than including all waters the respondents sell or distribute. Since respondents sell spring waters, filtered tap waters, and distilled waters—in addition to their two brands of mineral waters—this means many of respondents' products still will run free of coverage. In my view, there is no substantive basis for such a limited order. After all, the "no processing" claims challenged by the Commission are unrelated to Perrier's status as a mineral water. Further, the types of claims respondents made with respect to their Perrier brand seem to be transferable to their other waters.

The desirability of an order regarding all respondents' bottled waters is heightened by recent statements by Mr. Jacques Vincent, the new chairman of Source Perrier, S.A. Respondents are wholly-owned subsidiaries of Source Perrier, S.A. An article in February reported as follows regarding Source Perrier, S.A.'s marketing strategy: [1]

Perrier's goal is to become so diversified in water that it can shrug off any one brand's problems. Already, the vast majority of its revenue comes from U.S. and European brands made and sold locally and not readily identified with Perrier—such as Calistoga and Poland Spring in the U.S., Volvic and Contrex in Europe.

"Perrier is a very important product for us," Mr. Vincent says, "but I am more attached to having a water company than to any single product."

Especially in light of this marketing strategy, the Commission ought not agree to watered down product coverage.

Second, it may be that reasonable consumers are likely to interpret certain Perrier advertisements that currently are being run in a manner that would violate the proposed consent order. Specifically,

[1] *See* Browning, "Perrier's Vincent Plans Wave of Change as a Fresh Regime Displaces the Old," Wall St. J., Feb. 14, 1991, at B1, col. 3.

respondents appear to be disseminating advertisements that depict cartoon cavemen and historical figures filling cups with water as it spouts out of the ground. Reasonable consumers might be likely to interpret such advertisements as making an implied claim that Perrier is not processed or filtered. In that case, respondents would be subject to the proposed consent order's proscription against misrepresenting the fact or extent of processing and could face a civil penalty action. I am particularly interested in comments addressing the issue of whether consumers are likely to take an implied "no processing" claim from the cartoon depiction described above.

[FR Doc. 91-7118 Filed 3-25-91; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 030491 AND 031591

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Michael McCarthy, David H. Lowry, SDL Corp.	91-0596	03/04/91
Michael McCarthy, P. Edward Dean, Jr., SDL Corp.	91-0597	03/04/91
Onoda Cement Co., Ltd., Lone Star Northwest, Inc., Lone Star Northwest, Inc.	91-0606	03/04/91
Welsh, Carson, Anderson & Stowe V, L.P., PTR Holdings Corporation (Joint Venture), PTR Holdings Corporation (Joint Venture)	91-0610	03/04/91
Welsh, Carson, Anderson & Stowe V, L.P., James R. Elliott, Peach Tree Bancard Corp.	91-0611	03/04/91
Kelso Investment Associates IV, L.P., MagneTek, Inc., MagneTek, Inc.	91-0619	03/04/91
Broad Inc., Equitec Financial Group, Inc., Equitec Securities, Co.	91-0628	03/04/91
Peter Kiewit Sons', Inc., California Energy Co., California Energy Co.	91-0633	03/04/91
Kelso Investment Associates IV, L.P., MagneTek, Inc., MagneTek, Inc.	91-0634	03/04/91
Occidental Petroleum Corp., Occidental Petroleum Corp., VP-5 Mining Co.	91-0608	03/06/91
Farmland Industries, Inc., Arthur M. Goldberg, DiGiorgio Corp.	91-0630	03/06/91
Asko Oy, E. I. du Pont de Nemours and Co., E. I. du Pont de Nemours and Co.	91-0598	03/08/91
Sinclair Broadcast Group, Inc., Warburg, Pincus Capital Co., L.P., Channel 53, Inc.	91-0642	03/08/91
Reed International PLC, Weldon International PTY Limited, Rigby Education, Inc., Maurbern Pty. Ltd. and Mimosa	91-0646	03/08/91
Mitsubishi Motors Corp., Mitsubishi Corp., Mitsubishi Acceptance Corp.	91-0654	03/08/91
SLK Investing Co., Continental Bank Corp., First Options of Chicago, Inc.	91-0673	03/08/91
The Hartstone Group PLC, Charterhouse Equity Partners, L.P., Accessory Holdings, Inc. and Michael Stevens Ltd.	91-0652	03/11/91
The Loewen Group Inc., Robert D. Russel, Kraeer Funeral Homes, Inc.	91-0664	03/11/91
ESL Partners II, L.P., Saatchi & Saatchi Co., PLC, Saatchi & Saatchi Co., PLC	91-0674	03/11/91
Torchmark Corp., Golden Era Services, Inc., Sentinel American Life Insurance Co.	91-0629	03/12/91
Koninklijke Ahold NV., FS Equity Partners, a California limited partnership, RFS Buffalo Holding Corp.	91-0655	03/12/91
Blue Cross and Blue Shield of Maryland, Inc., CareFirst, Inc., CareFirst, Inc.	91-0670	03/12/91
Ford Motor Co., Sun Co., Inc., ECC Financial Group Corp.	91-0679	03/12/91
Allegheny Health Services, Inc., United Hospitals, Inc., United Hospitals, Inc.	91-0615	03/13/91
Westinghouse Electric Corp., Rockwell International Corp., Rockwell International Corp.	91-0656	03/13/91
Wal-Mart Stores, Inc., Western Merchandisers, Inc., Western Merchandisers, Inc.	91-0622	03/14/91
Alco Standard Corp., James Hovinga, West Michigan Holding Co., Inc.	91-0643	03/14/91
Trustees of TIAA Stock, SAV Development Co., Savannah Mall	91-0665	03/15/91
Maxwell Foundation, Tribune Co., New York News Inc.	91-0694	03/15/91
BellSouth Corp., BellSouth Corp., Atlanta/Athens MSA Limited Partnership	91-0698	03/15/91
The Dyson-Kissner-Moran Corp., DKM, Ltd., DKM, Ltd.	91-0697	03/15/91
Tandem Computers, Inc., U S West, Inc., Applied Communications, Inc.	91-0702	03/15/91
Fedders Corp., Emerson Quiet Kool Corp., Emerson Quiet Kool Corp.	91-0703	03/15/91
Telephone and Data Systems, Inc. Voting Trust, Mark R. Warner, Cherokee Cellular, Inc.	91-0704	03/15/91

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-7115 Filed 3-25-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Model Comprehensive Drug Abuse Treatment Programs for Adolescents/ Juvenile Justice

AGENCY: Office for Treatment Improvement.

ACTION: Request for applications for Model Comprehensive Drug Abuse Treatment Programs for Adolescents/ Juvenile Justice.

Introduction/Purpose

The Office for Treatment Improvement (OTI) is announcing a demonstration grant program to assist States and communities to enhance and expand (i.e. to create new treatment capacity) the availability of model comprehensive drug abuse treatment programs for adolescents with drug abuse problems and who have, or are at risk for, committing juvenile offenses or

crimes. The ultimate goals of this grant program are to improve drug treatment outcomes for this population and reduce the frequency with which adolescents interact with juvenile justice agencies and/or engage in criminal behavior because of their addictive disorders.

This program emphasizes the development of comprehensive model treatment programs for adolescents between the ages of 10 and 18 who have drug abuse or addiction problems and who are at-risk for, or who have been adjudicated for, status of criminal offenses. Adolescents who abuse drugs and who are considered at-risk for status or criminal offenses tend to possess certain common characteristics, to include: Low family socioeconomic status, high levels of school truancy and/or school drop-out rates, unemployment, homelessness, a high incidence of family involvement with drugs and/or alcohol, a history of child abuse, and/or family and peer involvement with the adult and juvenile justice systems. OTI asserts that it is critical to deal with the combination of adolescent addiction, anti-social and criminal behavior at the earliest stages possible, in order to break the cycle of drugs and crime that may eventually lead an adolescent to interaction with the adult criminal justice system.

OTI's operating philosophy is that addiction is a chronic relapsing disorder and treatment is most successful when providers offer: (1) A continuum of comprehensive therapeutic services, and (2) a readily accessible post-treatment aftercare program. Hence, treatment outcome should improve markedly for patients treated in "model" comprehensive treatment programs.

This grant announcement is designed to fund projects which result in a coordinated, comprehensive network of adolescent drug treatment services in one of two settings:

(1) *Community-based settings* that serve adolescent drug abusers who are adjudicated or at-risk for status or criminal offenses. Community-based projects should involve a consortium or network of services, ranging from community juvenile detention and residential treatment centers through outpatient services and aftercare.

(2) *State institutions* presently holding juveniles who have serious drug addiction problems and extensive juvenile justice involvement. Comprehensive community-based aftercare programming should be considered an integral part of the design for proposed projects involving State institutions.

OTI is undertaking this program in its role of implementing demand reduction programs for the National Drug Control Strategy, and under statutory authority of section 509G(b) of the Public Health Service Act, as enacted by Public Law 100-690, the "Anti Drug Abuse Act of 1988". Awards will be made to States only, in accordance with this authority, and only for specific treatment improvement projects proposed in the State's application and approved by OTI. Local or State programs or agencies proposing to implement discreet treatment projects are considered sub-applicants. Each State must submit a single, consolidated application listing all proposed projects from each of the proposed sub-applicants.

It is intended that individual treatment improvement projects will be selected from two categories of sub-applicants: (1) A consortium of local drug treatment and/or juvenile justice programs and agencies that propose to develop community-based treatment systems for adolescents who are adjudicated or at-risk for adjudication; and/or (2) State juvenile justice agencies that wish to focus on the development of comprehensive drug treatment service systems for juveniles in detention.

Awards will be made for the purposes of implementing treatment enhancement projects in existing programs (programs should have been providing base-line services to the target population for at least one year prior to date of submission of this application) and for creating new treatment capacity, provided: (1) The capacity created is in keeping with OTI's model standards of care; and (2) the application contains sufficient documentation of need for additional capacity.

Approximately 20 percent of total funds awarded under all OTI announcements in 1991 will be available for creating new treatment capacity. This percentage does not apply to individual grants at the sub-recipient level. Some sub-recipients may receive more than 20 percent, some less, and some awards will be made for treatment enhancement activities only.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This RFA, Model Comprehensive Drug Abuse Treatment Programs for Critical Populations: Adolescents/Juvenile Justice, is related to the priority area of Alcohol and Other Drugs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3283).

Covered Populations

The target population which is the focus of this announcement is composed of adolescents between the ages of 10 and 18 who are drug abusers and who are at-risk of, or who have been adjudicated for, status or criminal offenses.

Applicants are encouraged to include, if appropriate, treatment/interventions designed to serve the specific needs of the following sub-groups of adolescents: (1) Racial/ethnic minorities, including Blacks, Hispanics (Mexican American, Puerto Rican, Cuban American, Latin American), American Indians, Native Alaskans, Asian Pacific Islanders, and Native Hawaiians; (2) The homeless, including those at imminent risk of becoming homeless; (3) adolescents who experience a high incidence of co-occurrence of drug addiction with one or more of: Alcohol abuse, mental health disorders, or physical health disorders and/or diseases [as in the case of HIV-seropositive individuals]; and, (4) rural populations, defined as individuals who live outside a standard metropolitan statistical area.

Eligibility

Only States are eligible to receive grant awards under this announcement, in accordance with section 509G(b) of the Public Health Service Act. Each sub-applicant agency must submit its application to the designated State agency. Only one State agency shall be the official applicant for sub-applicants within each State and this agency must be designated in writing by the Governor. A copy of the letter from the Governor designating the State agency responsible for the administration of this program must be included as Document 1, in appendix I, Eligibility Documentation.

For purposes of this announcement, "State" is defined as the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Successor States to the Trust Territory of the Pacific Islands (the Federal States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Inappropriate for Review by OTI

1. Research demonstration applications using rigorously controlled comparative experimental designs to

assess the efficacy of particular substance abuse interventions are inappropriate under this announcement. Such requests may be more appropriate for the National Institute on Drug Abuse (NIDA), or the National Institute on Alcohol Abuse and Alcoholism (NIAAA).

2. Applications that request support for prevention or early intervention projects are inappropriate under this announcement, but may be appropriate for the Office for Substance Abuse Prevention (OSAP).

Funding for demonstration programs may not be requested from more than one ADAMHA entity (NIAAA, NIDA, OSAP, or OTI) for the same programmatic activities and patient population.

For information on the above grant programs, call the National Clearinghouse for Alcohol and Drug Information, 1-800-SAY-NOTO.

Program Goals

The goal of this demonstration grant program is to fund model comprehensive treatment programs for adolescents who have drug addiction problems and who are at-risk for, or who have been adjudicated for, status or criminal offenses.

It is intended that proposed treatment improvement projects, together with existing services and systems in a given community, could eventually become prototypes for effective drug treatment programs in other similar jurisdictions. OTI considers that effective treatment programs for adolescents should endeavor to:

- Decrease drug abuse;
- Decrease drug-related crime and other social dysfunctions and dislocations (e.g. homelessness, unemployment, and child abuse);
- Increase patient social, educational, and vocational functioning; and
- Reduce patient morbidity, including the incidence/severity of mental and physical health disorders, especially the seroprevalence of HIV/AIDS.

Rapid Obligation of Federal Funds Post-Award

Because of the need to improve the availability of comprehensive drug treatment services for this target population, OTI places considerable emphasis on timely obligation and expenditure of Federal funds awarded under this announcement. Therefore, preference may be given to funding projects in those States which provide a strong assurance that funds will be rapidly obligated to sub-recipients following the date of Federal grant award (see AWARD CRITERIA.)

Model Treatment Environments

This demonstration grant program is designed to improve the continuum of care for adolescents throughout the community, an approach that involves formal coordination of a wide array of health, drug treatment, family, education, juvenile justice, mental health, and social services available within a given jurisdiction, in order to effectuate a strong network of services.

Proposed enhancements/expansions, together with existing services, must build toward a comprehensive model approach. Examples of services that are inherent in a model comprehensive treatment system for adolescents are listed below. Methods of implementing these components, the staff delivering each service, and the style with which services are delivered, are expected to vary depending on the needs of each sub-applicant's target population.

I. Program Structure and Administration

- Joint cooperation among drug abuse agencies, juvenile service agencies, schools, juvenile courts, probation, health and mental health providers, and human service agencies.
- Establishment or enhancement of central intake and referral procedures.
- An oversight body such as a task force or advisory committee to assist with developing a shared vision, shared resources and expertise, and political support.
- Integration of juvenile corrections and drug treatment agency staffing, including cross training.
- Integration of base-line and proposed drug treatment services into total institutional programming or community services programming that represents a continuum of care.

II. Clinical Interventions and Other Services

- Base-line level of services must include: intake screening and assessment consisting of a medical examination, psycho-social evaluation, and drug history; general health care; medical detoxification; drug abuse education; self-help groups, i.e., Alcoholics Anonymous, Narcotics Anonymous; counseling or other formal intervention.
- In addition to the above, where warranted, a psychiatric evaluation must be included. The assessment should be comprehensive in nature and include information on family functioning, cultural/ethnic factors, peer influence, deviant behavior, anti-social attitudes, mental and emotional distress, and school adjustment. The intake process should include an assessment of patient eligibility (and subsequent registration) for Medicaid, public assistance, and other health and human services benefits, i.e., SSI, AFDC, Medicare, Youth Job Corps.
- Same day intake services.
- Documented case finding.
- On-site provision of preventive and primary medical care.
- Provision of, or established referral linkages for, acute medical care.
- Testing for hepatitis, retrovirus, tuberculosis, HIV positivity/AIDS, syphilis, gonorrhea, and other sexually transmitted diseases.
- Appropriate pharmacotherapeutic interventions with concomitant assessment and monitoring by qualified medical/psychiatric staff. These interventions are particularly appropriate for the homeless and other patient groups with a relatively high incidence of mental health disorders, for heroin-addicted individuals who require replacement therapy, and for HIV-seropositive individuals who require prophylactic medication such as aerosol pentamidine or AZT.
- Counseling for HIV positive/AIDS patients.
- Initial and random urine testing (frequent periodic) as appropriate.
- Basic substance abuse counseling and psychological counseling, including that which addresses families and significant others, provided by persons certified to provide these services.
- Practical life skills training.
- Nutritional and general health education provided by a qualified technician.
- Peer/support group forums, especially for HIV positive patients and individuals who have been exposed to rape or physical or sexual abuse.
- Substance abuse, sex and HIV/AIDS education and prevention, including family planning and contraception counseling and education [should include pregnancy prevention for adolescents].
- Vocational and educational evaluation, counseling and training; where possible, these services should be provided via linkages to appropriate training programs in the community [e.g., mentor program with local businesses, youth job corps, local education/GED programs]; coordination of these activities should involve case management and follow-up to ensure appropriate delivery of services.
- Liaison and intervention with juvenile justice authorities, legal aid, and Bureau of Indian Affairs, as appropriate.

- Social activities.
- Child care provision at the treatment facility, as appropriate.
- Provision of transportation services.
- Relapse training and prevention.
- Aftercare and follow-up services involving sustained and frequent interaction with recovering individuals who have graduated from the intensive or primary phase of treatment. Aftercare and follow-up should include consistent face-to-face contact between the graduate and his/her primary counselor or case manager, graduate participation in group and individual counseling sessions, social activities geared toward the recovering substance abuser, and graduate involvement in AA, NA or CA.

The components in this model array of services may be provided on-site or through collaborative agreements with community service providers. Where applicable, applicants are required to coordinate their efforts with related Federal grant programs, such as OTI's Model Comprehensive Treatment Programs for Critical Populations (CFDA #93.902), the Office for Substance Abuse Prevention's Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth program (CFDA #93.144), projects funded by the Office of Juvenile Justice and the Bureau of Justice Assistance, U.S. Department of Justice, and the Department of Education. Applicants should describe how existing treatment services, along with proposed enhancements/expansions and coordination efforts will serve the varied needs of the adolescents to be treated.

Activities for Which Grant Support is Available

Sub-applicants may apply for support of one or more enhancement treatment strategies or for creation of new capacity for adolescents, as required, in order to achieve the OTI criteria for model standards of care.

By definition, enhancement means "improvement." Examples of enhancement strategies include: additional services/staff necessary to improve the quality and success of treatment for adolescents; improvements in intake, diagnosis and referral to permit more comprehensive assessment of adolescent needs; innovative approaches for improving case management and aftercare; and, strategies for staff recruitment and retention.

A sub-applicant may also request funds to create new treatment capacity, provided the application is accompanied by a letter from the State drug abuse authority which attests to the existence of sufficient demand to support the new capacity being requested. This letter must be provided in Appendix 2.

Meeting Participation

Funds should be requested for at least one representative from each sub-applicant agency to attend one national technical assistance meeting per grant year, location to be determined. Each technical assistance meeting will average three days in duration.

Period of Support

Support may be requested for a period up to 4 years. Annual awards for continuation funding of sub-recipient grants will be subject to availability of funds and progress achieved.

Reporting Requirements

Progress reports will be required as specified in accord with PHS Grants Policy requirements.

Availability of Funds

In FY 1991, it is estimated that approximately $8 million will be available to support, through grants to States, approximately 12–15 individual treatment improvement/expansion projects under this announcement. It is expected that individual project funding needs will vary widely. The number and size of grant awards will depend upon program priorities and the availability of funds at the time of award.

Executive Order 12372 (Intergovernmental Review)

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Adolescents/Juvenile Justice (AJJ), Technical Resources, Incorporated, 3202 Tower Oaks Blvd., Rockville, Maryland 20852, (301) 230–4792 or (301) 230–4788.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. OTI does not guarantee to accommodate or explain for State process recommendations that are received after the 60-day cut-off date.

Application Process

Applicants should use form PHS–5161–1 (Rev. 3–89). The title of the RFA, Model Comprehensive Drug Abuse Treatment Programs for Adolescents/Juvenile Justice, plus this specification: (a) Adolescents in the community, or (b) juveniles in State institutions, should be typed in item number 10 on the face page of the Application for Federal Assistance (Standard Form 424) in PHS–5161–1. Application kits containing the necessary forms and instructions may be obtained from: Critical Populations: Adolescents/Juvenile Justice (AJJ), Technical Resources, Incorporated, 3202 Tower Oaks Blvd., Rockville, Maryland 20852, (301) 230–4792 or (301) 230–4788.

The State applicant agency must submit a cover letter listing all projects included in the application. The State must file the face sheet (Standard Form 424) and one form PHS–5161–1 (Rev. 3/89), illustrating consolidated budget information for all projects. Each sub-applicant must submit the face page of form PHS–5161–1, a separate budget sheet (Standard Form 424A), with detailed justified categorical information (i.e., personnel, equipment, supplies, travel), and a separate Program Narrative.

A description of the economies of scale (economic/resource advantages) associated with simultaneous creation of new capacity and enhancement should be included in Appendix 7.

The sub-applicant's budget and budget justification must include information which delineates between the costs associated with enhancements and those associated with new treatment capacity.

The signed original and two copies of the form PHS–5161–1, with appendices, should be sent by the State applicant agency to: Critical Populations: Adolescents/Juvenile Justice (AJJ), Technical Resources, Incorporated, 3202 Tower Oaks Blvd., Rockville, Maryland 20852, (301) 230–4792 or (301) 230–4788.

All information provided in applications must be accurate and truthful to the best of the applicant's knowledge, under penalty of all applicable federal laws and regulations.

Application Characteristics for Individual Projects

Each sub-applicant must develop and submit, through the State, a single application for funding. The application should consist of, in this order, a Face Sheet (SF–424); Abstract; Table of

Contents; Narrative, including Budget Forms (SF–424A); and Appendices.

Abstract

The Abstract should be single-spaced, 30-lines or less. The Abstract must summarize: (1) The target population and sub-population groups that will be served, including racial/ethnic group breakouts and size of the adolescent population, current and proposed; (2) substances that are typically abused by the target population(s); (3) the components (modalities) of the proposed treatment project; and (4) the functional relationship of the components into a comprehensive, unified project. The Abstract should be carefully prepared because it is: (a) Critical to the initial step in the review process; and (b) A permanent part of the final record of review, i.e., summary statement.

Table of Contents

Immediately following the abstract page, a table of contents is required which identifies the beginning page of each section of the proposal. The following sections must be included in the Table of Contents:

A. Goals and Objectives
B. Background and Significance
C. Target Population
D. Approach/Method
E. Evaluation Plan
F. Confidentiality Requirements
G. Project Staffing, Management and Organization
H. Budget, Budget Justification and Resources
I. Appendices

Narrative

At the beginning of the program narrative, the sub-applicant must indicate: (1) The name of the treatment program; (2) the title of the organization or agency primarily responsible for the project; and, (3) the name of the Project Director, i.e. the individual responsible for carrying out the proposed project. Note: This should be the same person as the one designated on page 18, last item, of form PHS–5161. The narrative should be written in a well-organized manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the subapplicant (see Specific Instructions for Completing the Narrative Section).

Appendices

Appended materials should be organized and labeled as follows for each separate component (where appropriate). All appendices are to be continuously paginated with the main body of the application.

1. Eligibility Documentation.

- *Document 1*—Governor's Letter (see Eligibility section)

2. State Certification of Sufficient Demand for Creation of New Capacity (if applicable).
3. Collaborative Agreements and Support Letters.
4. Agency Mission and Treatment Philosophy.
5. Resumes and Job Descriptions.
6. Other Support.
7. Creation of New Capacity/ Enhancement Detail.
8. State Assurance of Rapid Obligation of Funds Post-award.
9. Other Required Documents.

- *Document 2*—Designated State agency letter certifying existence of Juvenile Justice treatment plan.
- *Document 3*—Designated State agency letter certifying number of years providing base-line treatment.
- *Document 4*—Letter certifying consistency with State drug treatment plans.
- *Document 5*—Certification regarding lobbying activities.

Appendices may be attached for technical or specialized materials or letters of support, but should not be used merely to extend the narrative. The Appendices must be clearly numbered and labelled, must not exceed 50 pages, and the total number of application pages, including the Appendices, must have continuous numbering. The Appendices must include the letter from the Governor required for eligibility, as noted under the Eligibility section.

Specific Instructions for Completing the Narrative Section

Sections A–E of the Narrative may not exceed a total length of 25 single-spaced pages; and Sections F, G and H may not exceed a total length of 10 single-spaced pages.

The following sections A–G replace the general instructions for completing the program narrative of the application form PHS–5161–1. (Note: The following information is required).

A. Goals and Objectives

Identify the goals and specific treatment improvement and expansion objectives for the proposed project and discuss how these goals relate to those in the grant announcement. (Suggested length: One page.)

B. Background and Significance

Demonstrate familiarity with and understanding of state-of-the-art practices and general knowledge regarding service delivery appropriate to adolescents. Include a brief review of the literature and of other related projects or studies, as well as any relevant prior work or experiences of the agency. Describe the socio-economic characteristics of the community in which the target population resides, e.g. unemployment, homelessness. Also, provide statistical and other evidence that the proposed services are needed in the community and are not currently being provided. (Suggested length: 3 pages.)

C. Target Population

Include an operational definition of the target population(s) to be served by the project, to include a description, in so far as possible in statistical terms, of the following: Incidence and/or prevalence of alcohol and other drug abuse, by type of drug; incidence of drug-related criminal activity; race, age and gender characteristics, specified by percentages; size of current patient population and anticipated increase in number to be served; adolescent socioeconomic characteristics; a specific description of other available relevant services for the target population(s); and a discussion of gaps and other problems, such as accessibility of treatment services for adolescents.

D. Approach/Method

Discuss in detail the approach/ method to be used in carrying out the goals and objectives of the proposed project. The following information should be included:

1. A description of the existing components of the subapplicant's treatment program which includes specific treatment goals and modalities; include collaborative agreements with other service providers in Appendix 3 and a description of the mission and treatment philosophy of the program in Appendix 4;

2. A detailed plan that separates out and describes: Proposed treatment enhancements; how enhancements will interface with juvenile justice programs and the courts; how enhancements, together with existing treatment service components, will result in a comprehensive model treatment program for adolescents; and, how existing and proposed activities will address the treatment improvement goals of the project;

3. Where applicable, a plan and budget for capacity expansion which: distinguishes the specific staff, facility and equipment required to implement new capacity; precisely defines how much new capacity will be created in terms of treatment slots; and, in addition, provides: (1) A plan that specifically describes how capacity expansion is linked with proposed

enhancements; and (2) a description of how the new capacity will be consistent with the OTI model standard of care. Provide details in support of capacity expansion plans in Appendix 7.

4. Procedures for dealing with adolescent identification, involvement, retention, and follow-up;

5. Plans/proposed activities by which the unique needs and concerns of racial/ethnic minority individuals will be addressed in all aspects of service delivery, giving appropriate attention to such factors as cultural orientations and belief/value systems relevant to the target population(s);

6. A description of how each activity of the project, including the proposed technique for initial and random urine testing, will be approached and implemented; and how the project will be coordinated with existing programs to fill identified service gaps and thus meet the multiple needs of adolescents.

E. Evaluation Plan

Provide a plan for a process evaluation, to include a description of the evaluation design, methodology, and procedures for collection and use of data. Include the necessary computer equipment and personnel for data collection and analysis. The following are examples of evaluation data which are typically collected:

- Type and frequency of treatment services provided to adolescents, distinguishing between existing services and enhancements;
- Number of adolescents entering treatment during the treatment improvement project;
- Type of drug addiction and/or related health, mental health or other problems for which the adolescents were treated;
- Race, age, and gender characteristics of the target population served;
- Innovative approaches used for outreach, assessment, treatment, community coordination, and aftercare;
- Employee incentives utilized;
- Extent to which the grant project has been implemented as planned;
- Problems/barriers encountered and solutions offered;
- How the grant project integrates with the larger system of care within the community;
- Cost per patient served; and
- Payor source for client treatment (patient fees, private insurance, donations, Medicaid, etc.).

Outcome evaluation will be conducted on a national basis for demonstration projects funded by this grant program. The outcome measures that will be utilized during the course of the national evaluation will be developed by OTI in concert with the national contractor, the grantees and the sub-recipients. Grantees will be invited to work closely with the national evaluator and to provide data. Sub-recipients are encouraged to participate in the national evaluation.

F. Confidentiality Requirements

Applicants should describe procedures used to ensure confidentiality and protection of clients in this section. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the regulations governing, "Confidentiality of Alcohol and Drug Abuse Patient Records," (42 CFR part 2).

G. Project Staffing, Management and Organization

1. Organizational structure. Provide a narrative description and organizational chart, clearly indicating the sub-applicant's entire organizational structure and its component parts, how the proposed enhancement/expansion relates to various program components, and how it fits into the overall structure of the organization. Describe lines of authority between the Project Director and each related project unit/activity within the organization.

The responsibilities and composition of Boards of Supervisors, Directors, Trustees, and/or Advisors should be included, where applicable.

Provide a description of organizational relationships between the sub-applicant and other State/local level health and human services and juvenile corrections agencies as these relate to proposed services. If the sub-applicant agency is responsible to or receives program and/or management direction from a State, regional, or other office or agency, this relationship should be clearly described.

If a multi-site project applies or application is made on behalf of more than one program within the same organization, the following must be provided: (1) Lines of authority, clearly illustrated in an organizational chart; (2) differentiation of objectives between each site and/or program; (3) evidence of coordination among all program components; (4) identification of facility location where program enhancement is intended; and (5) delineation of linkages between components of the project with alcohol, drug, health, mental health, education, and public service agencies. Include in Appendix 3 copies of letters and/or other documentation of specific commitments of support and participation in the proposed project.

2. Organizational capability. Provide evidence that the organization is capable of implementing the proposed project. Applicants should provide evidence of experience in similar or relevant activities, expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indications of capability implicit in this RFA. The use of external expertise is encouraged when helpful (e.g., evaluation consultants).

3. Staffing pattern. Highlight staff experience and/or training pertinent to the proposed project. List each staff person/position within the separate components proposed for enhancement and new treatment capacity. Include in Appendix 5 biographical sketches for all key management positions in the treatment program, and all staff who will be assigned to this treatment improvement project.

Job descriptions must be submitted, in Appendix 5, for each key position, i.e. management, supervisors, and other clincial personnel at each site, identified in the proposed budget and should include: Job title, responsibilities, supervisory relationships, education, and qualifications. Only one job description is needed for identical positions. For each position, indicate the precentage of time each incumbent will devote to the project and indicate which positions require new hiring. Illustrate graphically each position and its activities in a staff loading chart. Provide documentation to assure that staff loaned to the project will be available for the amount of time required.

The narrative must include a brief description of procedures for staff recruitment, selection and training, and whether any particular mix of background, skills, gender, and/or race/ethnicity is proposed.

The relationship of staff characteristics to the target population(s) and objectives of the treatment improvement project is critical. Consideration must be given to the use of multidisciplinary staff and staff representing the gender, race, ethnic and cultural characteristics of the populations(s) being served.

4. Project Management Plan. The Management Plan must include a description of the tasks to be performed, including sequence, performance schedule, and mutual relationships. Each task should be related to the project goals and objectives, as well as to management and staffing. The level of

effort required for each task should be illustrated.

H. Budget, Budget Justification, and Resources

Using SF–424A, provide separate budget breakouts and sub-totals for the enhancement and expansion components with line item justifications for each component proposed.

Indicate in the expansion budget the number of slots that will be created. Provide detailed information on capacity expansion in appendix 7.

Describe the facilities, equipment, financial and other resources available to carry out the project. Include concrete plans for acquiring funding after Federal seed money has expired.

Other financial resources available for the project and/or program must be described in Appendix 6 and should be labeled "Other Support". Other Support refers to all current or pending support related to the provision of services to the target population described in this application.

For the primary organization and key organizations that are collaborating on the proposed project, list all currently active support and any applications or proposals pending review or funding that relate to the proposed project. If none, state none.

For all active and pending support listed, also provide the following information:

1. Source of support; include identifying number and title.
2. Project period dates.
3. Annual direct costs supported/requested.
4. Brief description of the project.
5. Justification of the nature and extent of any programmatic and/or budgetary overlaps with the proposed project.

Applicants are reminded of the necessity to provide full and reliable information regarding pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS. In signing the face sheet of the application, the authorized representative of the applicant organization certifies that the information in the application is accurate and complete.

I. Appendices (See Application Characteristics Section)

Review Process

Applicants must submit complete applications. Upon receipt, applications that are judged to be incomplete, non-responsive to this announcement or non-conforming (i.e., exceed the page limit or do not meet the Eligibility Criterion) may be returned.

Applications judged to be responsive to this RFA will be reviewed for technical merit in accord with the PHS and ADAMHA policies for objective review. The initial review group(s) (IRGs) will be composed primarily of non-Federal experts, i.e., peers. Notification of the review outcome in the form of Summary Statements will be sent to the State and sub-applicants once the technical merit review groups have completed their reviews.

Review Criteria

Each project recommended for approval by the IRG will be rated individually by all members of the IRG. Each IRG member will be asked to assign a priority rating from 1 to 5, with 1 being the best rating. The priority rating is based on an assessment of how well an application measures up to an ideal standard of technical merit and not how it compares with other applications. The ratings will be added, averaged, and multiplied by 100 to provide the actual priority score. The lower the score the higher the technical merit. Criteria for technical merit of individual projects are:

1. Proof of Need

- Need for improved services and new drug treatment capacity for the proposed adolescent/juvenile justice population, expressed in terms of numbers and percentages of adolescents with moderate to severe histories of substance abuse and criminal activity;
- Extent to which the current and proposed target population is statistically defined (e.g., race, age, ethnicity, gender, and size, by percentages);
- For proposed creation of new capacity requests, the extent to which volume of demand exceeds existing capacity for the sub-applicant's program;

2. Relevance

- Relevance of sub-applicant's proposed objectives to grant program goals and to the target population; and
- Relevance and sensitivity of program and staff to ethnic/racial/cultural factors of the target population.

3. Adequacy of Program Design and Methods

- Extent to which goals and objectives are achievable and realistic;
- Extent to which goals and objectives constitute an improvement over the described baseline of existing services;
- Extent to which proposed enhancements and new treatment capacity proposed, together with existing services, constitute a comprehensive model treatment approach;
- Potential for replicability in similar communities; and
- Adequacy of documentation of patient intake, assessment and referral processes;

4. Resources and Management

- Evidence of coordination with and commitment from drug abuse treatment, juvenile justice, health, mental health, welfare, community and educational service providers;
- Evidence of organizational capability and adequate facilities;
- Logic and feasibility of the management plan; and
- Capability/experience of the project director, consultants and staff; adequacy of the staffing plan.

5. Budget

- Reasonableness/appropriateness of budget breakouts and line item justification for each of the enhancement and creation of new treatment capacity components;
- Evidence of concrete plans for securing future funding following the period of Federal support for the project.

6. Program Evaluation

- Clarity/feasibility/appropriateness of proposed process evaluation design and methodology; and
- Extent to which proposed staff demonstrate evaluation expertise.

Award Criteria and Process

Individual projects will be considered for funding primarily on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:

(1) Need, as evidenced by:

A. The extent of drug abuse and morbidity in the target population, as evidenced by objective indicators.

B. Lack of access to alternative financial resources as evidenced in the application; under this criterion, preference may be given to funding sub-applicant agencies that are not currently receiving OTI, ADAMHA, or other federal discretionary grants for this target population (whether in a programmatic or research setting).

(2) Reasonable geographic distribution of awards.

(3) Distribution of awards to both urban and rural settings.

(4) Availability of funds.

(5) Preference may be given to funding projects in States which provide assurance that funds will be rapidly obligated to sub-recipients following the date of an award. Provide documentation of assurance in Appendix 8.

(6) In cases where the sub-applicant is a State juvenile justice agency, preference will be given to those State agencies who operate under the auspices of an operational State juvenile justice treatment plan. Include copy of treatment plan as Document 2 in Appendix 9.

(7) Preference will be given to sub-applicants requesting support for enhancement who have been providing drug abuse treatment services to the target population for at least one year prior to date of submission of this application. Provide documentation of number of years providing base-line treatment (see Model Treatment Environments, Clinical Interventions section), as Document 3 in Appendix 9.

(8) Preference will be given to sub-applicants providing documentation of consistency with current State drug abuse treatment plans. Include as Document 4 in Appendix 9.

(9) Preference will be given to two categories of subapplicants: (1) A consortium of local drug treatment and/or juvenile justice programs developing community-based treatment systems or; (2) State juvenile justice agencies developing comprehensive drug treatment service systems for juveniles in detention.

With limited funds it is unlikely that all projects included in an approved State application would receive support. If selected for an award, a State will receive a Notice of Grant Award specifying which projects are being funded, and the State will be responsible for notifying individual programs.

Terms and Conditions of Support

States may use grant funds only to support the particular projects for which funding is provided by OTI. Since transfers of funds between projects results in a change of scope for those projects, funds may not be re-budgeted among projects by the State without the written prior approval of the Grants Management Officer.

No less than 98 percent of the total amount awarded to each State must be allocated to the sub-recipients. The State may recover the lesser of its actual costs of administration (direct and indirect costs) of the grant, or 2 percent of the total amount of awards made to sub-recipients within the State.

Grant funds may be used for necessary expenses clearly related to the described project, including direct costs which can be specifically identified with the project, together with allowable indirect costs of the organization.

Grant funds cannot be used to supplant current funding for existing activities, either at the State or the sub-recipient levels. Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project;
- Other such items necessary to support project activities;
- Alterations and renovations. Costs for alterations and renovations (A&R) will be allowable where such A&R is necessary for the success of the program, subject to the Public Health Service (PHS) Grants Policy Statement which states that, "The amount budgeted or used for A&R during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000 or 25% of the total funds reasonably expected to be awarded by PHS for direct costs for such a three-year period. In addition, the maximum amount of PHS grant funds that may be spent for any single A&R project is $150,000—regardless of the number of budget periods involved." Construction costs are not allowed.

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Application Receipt and Review Schedule

Receipt date	Initial review	Earliest start date
June 17, 1991	July/Aug. 1991	September 1991.

Applications received after the above receipt date will not be reviewed and will be returned to the applicant.

Contacts for Further Information

Questions concerning program issues may be directed to the individuals listed below:

Janice Berger or Nick Demos, Special Initiatives Branch, OTI, (301) 443–6533.

Questions concerning the review process should be directed to: Maggie Wilmore, Division of Review, OTI, (301) 443–8923.

Questions concerning grants management issues should be directed to: Christine Chen, Grants Management Branch, OTI, (301) 443–9665.

Correspondence to the above individuals should be addressed to: Office for Treatment Improvement, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96–511, OMB Approval Number 0937–0189.

(The Catalog of Federal Domestic Assistance number for this program is 93.902.)

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–7173 Filed 3–25–91; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 90P–0353]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Flav-O-Rich, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food

Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Flav-O-Rich, Inc., 10140 Linn Station Rd., Louisville, KY 40223.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.4 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 1,500,000 pounds (680,400 kilograms) of the test product packaged in 8-ounce (227-gram), 12-ounce (340-gram), 16-ounce (454-gram), 24-ounce (680-gram), and institutional size containers and distribution in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. The test product will be produced at Flav-O-Rich, Inc., 2537 Catherine St., Bristol, VA 24203.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than June 24, 1991.

Dated: March 14, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–7062 Filed 3–25–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91P–0025]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Dean Foods Co. to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). FDA is giving notice that a temporary permit has been issued to Dean Foods Co., 1126 Kilburn Ave., Rockford, IL 61101.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains 0.2 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent milkfat, the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

The permit provides for the temporary marketing of a total of 6 million pounds (2,721,600 kilograms) of test product to be packaged in 16-ounce (454-gram) and 24-ounce (680-gram) containers.

The test product will be produced and packaged at Creamland Dairies, Inc., 1911 2d, NW., Albuquerque, NM 87125; Dean Foods Co., 4420 Bishop Lane, Louisville, KY 40218; Dean Foods Co., Bus. 31 North, Rochester, IN 46975; Dean Foods Co., 1126 Kilburn Ave., Rockford, IL 61101; Fairmont Products, Inc., 15 Kishacoquillas, Belleville, PA 17004; Fieldcrest Sales Co., 401 South Main St., Westby, WI 54667; and Gilt Edge Farms, Inc., 302 South Porter, Norman, OK 73071; and sold throughout the continental United States and the Virgin Islands.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than June 24, 1991.

Dated: March 12, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–7063 Filed 3–25–91; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

[Program Announcement No. 13631–91–01]

Developmental Disabilities: Request for Public Comment on Proposed Developmental Disabilities; Priorities for Projects of National Significance for Fiscal Year 1991

AGENCY: Administration on Developmental Disabilities (ADD), Office of Human Development Services (HDS).

ACTION: Notice of request for public comments on proposed developmental disabilities priorities for Projects of National Significance for Fiscal Year 1991.

SUMMARY: The Administration on Developmental Disabilities, Office of Human Development Services, announces that public comments are being requested on proposed demonstration priorities for Fiscal Year 1991 Projects of National Significance.

We welcome specific comments and suggestions on these proposed priority areas as well as recommendations for additional priority areas which will assist in bringing about the independence, productivity, and integration into the community of persons with developmental disabilities.

DATES: Closing date for receipt of public comments is May 28, 1991.

ADDRESSES: Comments should be sent to: Deborah L. McFadden, Commissioner, Administration on Developmental Disabilities, Department of Health and Human Services, room 349–F HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Kay Smith, Program Development Division, Administration on Developmental Disabilities, (202) 245–2984.

SUPPLEMENTARY INFORMATION:

Part I. Background

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Office of Human Development Services (HDS), Department of Health and Human Services (DHHS). Although different from the other HDS program administrations in the specific populations it serves, ADD shares a common set of goals:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need;
- To improve the effectiveness and efficiency of State and locally administered human services programs; and
- To improve the quality of HDS programs and services while encouraging innovation and choice through the marketplace.

Emphasis on these goals, and progress towards them will help more persons with developmental disabilities to live productive and independent lives, integrated into communities. It is through the Projects of National Significance Program that ADD attempts to promote the achievement of these goals.

Increased specialization, categorical programs, and the diversity of services and providers at the local level have increased the need for effective communication, networking, and cooperation among all concerned, particularly those at the level where services are delivered, to increase program effectiveness, maximize the use of existing resources, and avoid duplication or fragmentation of services. Program accountability and innovation are essential to more adequately address complex social issues and to help more individuals and families reduce their dependency.

The importance of identifying new ways to address the needs of individuals with developmental disabilities and their families is increasing as fiscal constraints strain the capacity of existing programs. ADD realizes that agencies serving persons with developmental disabilities must have access to innovations in a usable format. Therefore, in Fiscal Year 1991, ADD supports and encourages the dissemination and replication of project findings and models of successful innovations, and the transfer of information and methods of successfully accessing services.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within HDS and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (Public Law 101–496) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services, assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community.

The Act emphasizes that persons with developmental disabilities include those with severe functional limitations attributable to physical impairments, mental impairments, and combinations of physical and mental impairments. It recognizes that, notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences. Most importantly, the Act points out that a substantial portion of persons with developmental disabilities remain unserved or underserved.

The Act also stresses that the family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with the necessary support services; that public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and that it is in the national interest to offer persons with developmental disabilities the opportunity to make decisions for themselves and to live in homes and communities where they can exercise their full rights and responsibilities as citizens.

In addition, in administering the Act at the Federal level, ADD seeks to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential (through self-advocacy and empowerment); in supporting the increasing ability of persons with developmental disabilities to perform leadership functions, and determine changes of their choice; as well as in ensuring the protection of the legal and human rights of these individuals.

Programs funded under the Act are:

- Basic State formula grants;
- State system for the protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Description of Projects of National Significance

Under part E of the Act, grants and contracts are awarded for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities, and to support the development of national and state policy which enhances the independence, productivity, and integration of these individuals. These projects may include, but are not limited to:

- Projects to conduct data collection and analysis;
- Projects to provide technical assistance to program components;
- Projects to provide technical assistance for the development of information and referral systems;
- Projects which improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness;
- Projects to educate policymakers;

• Projects to pursue Federal interagency initiatives;

• Projects that support the enhancement of minority participation in public and private sector initiatives in developmental disabilities; and

• Other projects of sufficient size and scope, and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups).

In addition, funds may be awarded for technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which expand or improve the advocacy functions of the State Planning Councils, the functions performed by University Affiliated Programs and Satellite Centers, and the Protection and Advocacy System.

Section 162(c) of the Act requires that ADD publish in the **Federal Register** proposed priorities for grants and contracts to carry out Projects of National Significance. The Act also requires a period of 60 days for public comment concerning such proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities for such grants and contracts, and solicit applications for funding based on the final priorities selected.

The following section presents the proposed priority areas for Fiscal Year 1991 Projects of National Significance. We welcome specific comments and suggestions as well as suggestions for additional priority areas. We would also like to receive suggestions on topics which are timely and relate to specific needs in the field of developmental disabilities.

Topics of particular interest to ADD for Fiscal Year 1991 include self-advocacy and empowerment of consumers and/or their families; supporting families who have a member with a developmental disability through the replication of successful models for accessing services; and supporting the ability of persons with developmental disabilities to perform leadership functions, and make their own choices—personal or professional.

Part II. Fiscal Year 1991 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations concerning research, demonstration, evaluation, training or technical assistance projects which address areas of existing or evolving national significance related to the field of developmental disabilities.

We also solicit recommendations for project activities which will advocate for public policy change and community acceptance of all people with developmental disabilities and their families so that such persons receive the services, supports, and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all persons with developmental disabilities, including persons with the most severe disabilities, in community life; which promote the interdependent activity of all persons with developmental disabilities and people who are not disabled; and which recognize the contributions of these individuals (whether they have a disability or not), as such individuals share their talents at home, school, and work, and in recreation and leisure time.

No proposals, concept papers or other forms of application should be submitted at this time. Any such submission will be discarded.

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

Comments should be addressed to: Deborah L. McFadden, Commissioner, Administration on Developmental Disabilities, Department of Health and Human Services, room 349–F HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

Proposed Fiscal Year 1991 Priority Area 1: Strengthening Families

There is a continuing need to provide information to parents and families of individuals with developmental disabilities on successfully accessing the necessary services and service systems to increase their independence, productivity and self-sufficiency.

Therefore, we propose to fund a project that will be established nationally to serve as a repository of information on family support issues; identify and/or develop models of excellence; serve an information dissemination function by translating the wealth of information on current issues relating to self-advocacy and empowerment into materials that can be used by parents/parent groups; and provide information on replicating exemplary family support activities. Project activities would include:

• Identification/development of exemplary models/models for replication that establish, at the local level, effective methods of establishing communication and cooperative working relationships between the local service system and the families of persons with developmental disabilities in the provision of individualized family support services;

• Dissemination of information to parents and national and local parent organizations on self-advocacy and empowerment issues;

• Dissemination of innovative models and methods for increasing the public's awareness of family support services and issues; and

• Replication of best practices and methods for effectively influencing and impacting policymakers' decisions that are relevant to the development of family support policies and programs.

Every effort will be made to coordinate the activities under this priority area with the Department of Education.

Proposed Fiscal Year 1991 Priority Area 2: Youth Leadership Development

In responding to the mandates of ADD's recently reauthorized legislation, we propose to fund challenge grants to states to develop exemplary models of youth leadership programs that would conduct the following activities:

• Create a cadre of trained youth with and without developmental disabilities to fulfill the role of leaders/organizers in the field of developmental disabilities;

• Establish a youth leadership curriculum that would focus on the Americans with Disabilities Act, advocacy issues, educating policymakers (self-advocacy and empowerment), service provision, etc., as these issues relate to the needs, concerns and expectations of young adults with developmental disabilities for increased independence, productivity, and integration; and

• Develop a national network of youth groups that would serve as role models/mentors and as a support network to other young adults with developmental disabilities.

Proposed Fiscal Year 1991 Priority Area 3: Enhancement of Minority Participation in Public and Private Sector Initiatives in Developmental Disabilities

We propose to fund projects (through demonstrations as well as procurements) that would ensure the integration and active participation of

minority professionals within the national and state developmental disabilities training and service network. This would be accomplished through the following activities:

- The development, implementation, and evaluation of model programs designed to recruit and retain minority faculty and students at institutions of higher education that prepare personnel to work in the field of developmental disabilities;
- The initiation of training programs designed to ensure the participation of minority professionals in the developmental disabilities service network; and
- The facilitation of the dissemination of information, and the promotion of minority leadership and multi-cultural environments in the developmental disabilities training and service system.

The second component of this priority area would focus on supporting programs which provide sensitivity training for professionals who work with minorities with developmental disabilities from multi-cultural areas across the age-span. The cultural sensitivity training would provide to the state agencies information that could influence policy and impact legislation and funding for services which would actively include minorities with special needs.

Proposed Fiscal Year 1991 Priority Area 4: Home Ownership

In response to the mandates of the Act, and in an effort to address the question of how we can better respond to the housing needs of Americans with developmental disabilities, ADD proposes to award grants to demonstrate and disseminate information on innovative approaches that result in home ownership (independent living) of private community-based residences by persons with developmental disabilities. Examples of project activities include:

- Successful community integration through home ownership;
- Provision of evidence of collaboration with local housing agencies, builders, developers, etc.;
- Provision of choices of places of community residence; and
- Identification of solutions to barriers (fiscal, policy and programmatic) to individualized housing.

Proposed Fiscal Year 1991 Priority Area 5: Technical Assistance Projects

Under separate contractual solicitations, ADD proposes to award funds to provide technical assistance to improve the functions of the Developmental Disabilities Council, Protection and Advocacy System, and the University Affiliated Program; and to develop information and referral systems.

This announcement is a public comment notice only. No proposals, concept papers or other forms of application should be submitted at this time. Any such submission will be discarded.

No acknowledgments will be made of the comments in response to this notice, but all comments will be considered in preparing the final priorities for developmental disabilities Projects of National Significance for Fiscal Year 1991.

(Federal Catalog of Domestic Assistance Number 13.931 Developmental Disabilities—Projects of National Significance)

Dated: March 18, 1991.

Deborah L. McFadden

Commissioner, Administration on Developmental Disabilities

Approved: March 19, 1991.

Mary Sheila Gall

Assistant Secretary for Human Development Services

[FR Doc. 91-7101 Filed 3-25-91; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Amosite Asbestos

The HHS' National Toxicology Program announces the availability of the Technical Report on toxicology and carcinogenesis studies of amosite asbestos, a fibrous member of the amphibole mineral group.

Toxicology and carcinogenesis studies of amosite asbestos alone or in combination with the intestinal carcinogen 1,2-dimethylhydrazine dihydrochloride (DMH) were conducted by administering to groups of 100–250 rats of each sex pelleted diets containing 0% or 1% amosite asbestos in lifetime studies. At 9 weeks of age, subgroups of 125–175 rats (one positive control and one amosite asbestos-exposed group) received 7.5 mg/kg (male) or 15 mg/kg (female) DMH in acetate buffer by gavage every 14 days for a total of five doses.

Under the conditions of these feed studies, amosite asbestos was not overtly toxic, did not affect survival, and was not carcinogenic when ingested at a concentration of 1% in the diet by male or female F344/N rats. The cocarcinogenic studies using DMH were considered inadequate because of the high incidence of DMH-induced intestinal neoplasia in both the amosite asbestos-exposed and nonexposed groups.

Copies of Toxicology and Carcinogenesis Studies of Amosite Asbestos in F344/N Rats (Feed Studies) (TR 279) are available without charge from the Chemical Carcinogenesis Branch, MD A0-01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-1371.

Dated: March 20, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 91-7035 Filed 3-25-91; 8:45 am]

BILLING CODE 4140-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31798]

Ogeechee Railway Co.; Lease and Operation Exemption; the South Western Rail Road Co.; and Central of Georgia Railroad Co.; Discontinuance Exemption; in Peach and Houston Counties, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts: (1) From the prior approval requirements of 49 U.S.C. 11343–11344, the lease and operation by Ogeechee Railway Company of a 12.8-mile line of railroad between Fort Valley and Perry, in Peach and Houston Counties, GA; and (2) from the prior approval requirements of 49 U.S.C. 10903–10904, the discontinuance of service by Central of Georgia Railroad Company over the same line. The exemptions are subject to employee protective conditions and an historic preservation condition.

DATES: These exemptions are effective on April 2, 1991. Petitions to reopen must be filed by April 10, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31798 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives: John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895; and F. Blair Wimbush, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 (TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: March 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7119 Filed 3-25-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act; Acushnet Co., et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Acushnet Company, et al.*, Civil Action No. 91-10706-K, has been lodged with the United States District Court for the District of Massachusetts on March 5, 1991. The proposed consent decree concerns the cleanup of a hazardous waste site known as the Sullivan's Ledge Site, which is located in New Bedford, Massachusetts. The proposed consent decree requires fourteen defendants to perform the remedy for the first operable unit at the site, to perform operation and maintenance for thirty years, to reimburse EPA for full oversight costs for five years and 50% thereafter through year thirty, and to pay EPA $620,000 in past costs. The present worth value of these activities is estimated by EPA to be $12.37 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Acushnet Company, et al.*, D.J. Ref. 90-11-2-388.

The proposed consent decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack Federal Building, U.S. Post Office and Courthouse, Boston, Massachusetts, 02109; at the Region I Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts, 02203; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. A copy of the proposed consent decree and appendices can be obtained in person or by mail from the Document Center. In requesting a copy of the consent decree, please enclose a check in the amount of $96.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-7059 Filed 3-25-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Unitank Terminal Service, et al.

In accordance with Department policy, 28 CFR 50.7 notice is hereby given that on March 12, 1991, a proposed consent decree in *United States* v. *Unitank Terminal Service, et al.*, Civil Action No. 87-6793, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decree resolves a judicial enforcement action brought by the United States against Unitank Terminal Service, Unitank, Inc., and DRT Industries, Inc., under the National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR part 61, subparts A, J and V, promulgated under sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414.

In this action filed on October 23, 1987, the United States sought injunctive relief and civil penalties for violations at defendants' chemical and petroleum storage facility in Philadelphia of various marking, monitoring and recordkeeping requirements of the benzene NESHAP regulations. The proposed consent decree requires that defendants pay a total sum of $135,000, in satisfaction of and to settle the claims raised against the defendants in this lawsuit. Because defendants have sold the facility, no injunctive relief is required.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Unitank Terminal Service, et al.*, D.J. Ref. 90-5-2-1-1132.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, suite 1300, Philadelphia, Pennsylvania 19106, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $1.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

George VanCleve,

Deputy Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-7061 Filed 3-25-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree and Entry of an Administrative Settlement; Agway, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on March 14, 1991, a proposed consent decree in *United States of America* v. *Agway, Inc., et al.*, Civil Action No. 91-CV-0288, has been lodged with the United States District Court for the Northern District of New York. The United States' complaint, filed at the same time as the consent decree, sought recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against Agway, Inc. and fifth-six other corporations responsible for hazardous wastes found at the Fulton Site in Fulton, New York, a National Priority List facility. Notice is also given of an Administrative Settlement between EPA and Griffiss Air Force Base, located in Rome, N.Y., and the Veterans Administration Medical Center, located in Canadaigua, N.Y.

The consent decree provides that the defendants will perform work to remedy contamination at the site, in accordance with the Record of Decision (ROD) issued by the U.S. Environmental Protection Agency (EPA), and reimburse EPA for all response costs to be incurred by the United States in connection with

oversight of the implementation of ROD from the effecive date of the Consent Decree through the end of the second year of operation of the groundwater treatment system called for by the ROD. The remedial work will include excavation and treatment of contaminated soils, pumping and treating the contaminated groundwater and monitoring of the groundwater. The defendants also agree to reimburse EPA for certain past governmental response costs.

The Administrative Settlement requires the settling federal agencies to pay their respective shares of response costs under the Consent Decree.

The Department of Justice will receive comments relating to the proposed consent decree and the proposed Administrative Settlement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. Agway, Inc., D.J. Ref. 90-11-3-272.

The proposed consent decree and the proposed Administrative Settlement may be examined at the office of the United States Attorney, 369 Federal Building Syracuse, New York, 13260 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278. The proposed consent decree and the proposed Administrative Settlement may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree or the proposed Administrative Settlement may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $66.50 for the Consent Decree and $2.25 for the Administrative Settlement (25 cents per page reproduction cost) payable to the "Consent Decree Library"

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-7058 Filed 3-25-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

The National Cooperative Research Act of 1984; Petroleum Environmental Research Forum (PERF) Project 88-08

Notice is hereby given that, on February 26, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants of the Petroleum Environmental Research Forum ("PERF") Project No. 88-08, titled "Preparation of Reference Document and Database on Petroleum Refinery Odors", filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the project and (2) the nature and objective of the research program to be performed in accordance with said project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 88-08, together with the nature and objectives of the research program, are given below.

The current parties to Project 88-08 identified by this notice are:

BP America Inc., 200 Public Square, Cleveland, OH 44114-2375.

Conoco, Inc., 1000 South Pine, P.O. Box 1267, Ponca City, OK 74603.

Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932.

IIT Research Institute, 10 West 35th Street, Chicago, IL 60616.

Koch Refining Company, P.O. Box 64596, St. Paul, MN 55164.

Marathon Oil Company, P.O. Box 269, Littleton, CO 80160.

Petro Canada, 2489 North Sheridan Way, Mississauga, Ontario, Canada L5K 1A8.

Texaco, P.O. Box 1608, Port Arthur, TX 77641.

Unocal Corporation, P.O. Box 7600, Los Angeles, CA 90051.

The objective of this Project is to prepare a comprehensive inventory and review of odor sources within petroleum refineries and to document what is known about the composition and characteristics of the odors, the chemistry of their formation, and the technologies for preventing and controlling the odors. Participation in this Project will remain open until the completion date of the Project. The parties intend to file additional written notification disclosing all changes in the membership and scope of this Project. Information regarding participation in this Project may be obtained from J. Greenberg at BP Research, 4440 Warrensville Center Road, Cleveland, Ohio 44128.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-7060 Filed 3-25-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91-20; Exemption Application No. D-8421, et al.]

Grant of Individual Exemptions; Amended and Restated Aero Cast Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978)

transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Amended and Restated Aero Cast Inc., Profit Sharing Plan (the Plan) Located in Miami, Florida

[Prohibited Transaction Exemption 91–20; Exemption Application D–8421]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain units of ownership interest in two limited partnerships (collectively, the Units) to David F. Janney, a party in interest with respect to the Plan, provided that the Plan receives the greater of $75,274 and $62,793 for the Units in each of the respective partnerships or the fair market value of the Units at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 24, 1990 at 55 FR 52907/52909.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Austin Radiological Money Purchase Pension Plan and Austin Radiological Profit Sharing Pension Plan (collectively, the Plans) Located in Austin, Texas

[Prohibited Transaction Exemption 91–21; Exemption Application No. D–8437 and D–8438]

Exemption

The restrictions of section 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to certain interest-free extensions of credit in the form of overdrafts [the Loans] made during 1986 through 1987 to the Plans by NCNB Texas National Bank and its predecessors, fiduciaries of the Plans and parties in interest with respect to the Plans, provided that the terms and conditions of the Loans were at least as favorable to the Plans as those which the Plans would have received in similar transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 11, 1990, at 55 FR 50894.

EFFECTIVE DATE: This exemption is effective January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of March, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–7129 Filed 3–25–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8439, et al.]

Proposed Exemptions; Boilermakers' and Blacksmiths' Lodge No. 169 Joint Training Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of

Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Boilermakers' and Blacksmiths' Lodge No. 169 Joint Training Fund (the Plan) Located in Dearborn, Michigan

[Application No. D–8439]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed cash sale by the Plan of certain improved real property located in Dearborn, Michigan (the Property) to the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Lodge No. 169 (the Union), a party in interest with respect to the Plan; provided that the purchase price paid for the Property is no less than the greater of $70,000 or the Property's fair market value as of the date of such sale.

Summary of Facts and Representations

1. The Plan is an apprenticeship training plan with 958 participants and total assets of $187,828 as of June 30, 1990. The Plan is maintained pursuant to collective bargaining agreements between the Union and employers of members of the Union (the Employers). The trustees of the Plan are one Union representative, Edward D. Rokuski, and one respresentative of the Employers, David W. Johnson (the Trustees).

The Plan provides occupational and professional training to members of the Union who satisfy the criteria for participation in the Plan's training school programs. Since August 1989, the Plan's operations and administration have been conducted in facilities located within the Property. The Property is a parcel of commercially-zoned real property located at 7351 Steadman in Dearborn, Michigan and is improved with a one-story brick warehouse structure housing a metal shop and related training facilities. The Plan purchased the Property on August 7, 1989 for a cash purchase price of $70,000 from Christopher M. and Mary T. Seward, whom the Trustees represent to be unrelated to the Plan.

2. The Trustees represent that they recently determined that the facilities constituting the Plan's training school on the Property are in need of substantial improvement and expansion in order to continue meeting the Plan's needs in responding to training demands. After an analysis of the necessary improvements, the Trustees estimate that the project will cost at least $181,000. In addition, the Trustees also expect such improvments to result in increases in the ongoing costs of utilities, maintenance and property taxes. The Trustees represent that they have determined that it would be imprudent to commit the Plan to the expenses of this improvement and expansion project and the resulting increases in the Property's ongoing holding costs, in consideration of the substantial reduction in liquidity of Plan assets which would necessarily result from such a commitment. The Trustees represent that they have reviewed all reasonable alternatives available to the Plan and have determined that under the circumstances the prudent course of action is to preserve the financial integrity of the Plan while ensuring that the Plan remains able to continue its training mission adequately. With this objective, the Trustees propose to sell the Property to the Union, in order to enable the Union to fund the improvement and expansion project, and is requesting an exemption to permit such sale under the conditions described herein.

3. The Union will pay the Plan cash for the Property in an amount no less than the Property's fair market value as of the date of such sale. The Property has been appraised by Dick A. J. Behr, MAI (Behr), an independent professional real estate appraiser in Dearborn, Michigan. Behr represents that as of April 20, 1990, the Property had a fair market value of $70,000. The Union will pay the Plan cash of no less than $70,000 for the Property. Behr's appraisal will be updated as of the date of the sale and the purchase price will be adjusted upward to reflect any increase in the Property's fair market value since the appraisal of April 20, 1990. The Union will pay all costs with respect to the sale transaction. The Plan's interests in the consummation of the sale transaction will be represented by an independent fiduciary, the TIC International Corporation (the Fiduciary), a pension plan actuarial and administrative service provider which is the administrator of the Plan. The Fiduciary provides administrative services on a contract basis to the Plan and to a vacation plan sponsored by the Union and is not named or designated as a fiduciary with respect to such services. The Trustees represent that aside from this provision of services, there is no relationship between the Union and the Fiduciary. The Fiduciary represents that it has independently reviewed and considered the circumstances surrounding the Plan's needs for improved facilities, the alternatives available to meet those needs and the Trustees' proposal to sell the Property to the Union to enable the necessary alternations. The Fiduciary represents that the Plan is financially unable to make the improvements to the Property which are necessary to prevent the Plan from conducting its operations in an inadequate facility. The Fiduciary maintains that a sale of the Property to an unrelated third party is not a reasonable alternative to the Plan due to the Plan's likely inability to negotiate leaseback terms as favorable as those available from the Union. The Fiduciary represents that the Plan's proposed sale of the Property to the Union is in the best interests of the Plan's participants and beneficiaries. The Fiduciary will represent the Plan's interests in the execution of all documents necessary to affect the sale transaction and will continue to represent the Plan interests in the negotiation and for the duration of a proposed Plan lease of the Property from the Union after the sale transaction, as described below.

4. The Trustees and the Union intend that upon the proposed Plan sale of the Property the Union will commence the necessary improvements and expansion of the Property at its own expense and the Plan will continue to operate its training facility on the Property under a lease (the Lease) of the Property from the Union. The Trustees represent that the Plan's lease of the Property from the Union pursuant to the Lease will satisfy the requirements of a class exemption issued by the Department, Prohibited Transaction Exemption 78–6 (PTE 78–6, May 30, 1978, 43 FR 23024), and that the Lease will be exempt, therefore, from the prohibitions of section 406(a) of the Act.[1] The Union Trustee represents that he has not and will not use any of the authority, influence or control which makes him a fiduciary with respect to the Plan in order to cause the Plan to enter into or remain obligated under the Lease. Accordingly, the Trustees represent that the Lease will not constitute a violation of section 406(b) of the Act.[2]

5. In summary, the applicant respresents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive cash for the Property of no less than the Property's fair market value on the sale date; (2) The proposed transaction will enable the Plan to continue operations in an expanded, improved facility without threatening its own financial integrity; (3) The Union will pay all costs related to the sale transaction; and (4) The interests of the Plan are represented by an independent fiduciary which has determined that the proposed transaction is in the best interests of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

LaBranch & Company Retirement Plan (the Plan) Located in New York, New York

[Application No. D–8440]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to proposed loans (the Loans) by the Plan to LaBranch & Company (the Employer), the sponsor of the Plan; provided that all terms and conditions of the Loans are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties.

EFFECTIVE DATE: This exemption, if granted, will be effective for a ten year period commencing with the date on which the first Loan is executed.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan which provides for individual participant accounts (the Accounts). The Employer, a specialist broker/dealer firm on the New York Stock Exchange, is a New York limited partnership, the general partner of which is LaB Investing Company (LaB), a New York general partnership. The partners of LaB are seventeen corporations, sixteen of which are wholly owned by individuals who are employees of the Employer. The trustees of the Plan are three employees of the Employer (the Trustees). As of January 1, 1990, there were 40 participants (the Participants) and total assets of $5,044,013.10 in the Plan. Investment decisions on behalf of the Accounts are made by the individual Participants, who direct the Trustees to invest the balances of their Accounts among a selection of investment choices made available by the Trustees. As of June 15, 1990, there were ten investment options available to each Participant. The Trustees propose to create an additional investment option for the Accounts by amending the Plan to enable the Participants to invest limited amounts of their Account balances in the Loans. An exemption is requested to permit the Loans under the terms and conditions described herein.

2. The Loans will be among the Accounts' investment choices for a ten year period commencing with the date on which the first Loan transaction is consummated. The Participants who elect to invest in the Loans will direct the Trustees with respect to such elections. Each electing Participant's investments in the Loans will be limited to a maximum of 25 percent of the Participant's Account balance. Each Loan will be evidenced by a promissory note (the Notes) which will embody all terms and conditions of the Loan. The interests of each Account with respect to the Notes will be represented by an independent fiduciary, The Bank of New York (the Bank), which represents that it is independent of the Employer. The Bank will oversee and monitor the Employer's repayment of the Loans and compliance with all terms of the Notes. Each Note will have a maturity date no later than ten years after the execution date of the first of the Notes, except that after its first anniversary date each Note will be payable upon demand of the Participant. Each Note will provide for interest, payable quarterly, at the rate of the prime rate announced by Citibank, N.A., of New York, plus one percent, adjusted annually. However, each Note will provide that if such interest rate is determined by the Bank, initially or on an anniversary date thereof, to be below the fair market interest rate, the interest rate of the Note for the applicable period will be adjusted to reflect the fair market rate. The outstanding principal and accrued, unpaid interest under each Note is payable prior to the Note's maturity date upon the election of the Participant after the Note's first anniversary date or upon the termination of the Participant's employment with the Employer. The full amount of the indebtedness evidenced by each Note will be secured by a letter of credit, a written irrevocable commitment by a financial institution approved by the Bank to repay all amounts due under the Note in the event of the Employer's failure to pay such amounts in accordance with the terms of the Note. Each letter of credit securing a Note will be for an amount no less than the Loan principal plus five months of interest under the Note. The Employer will bear all expenses related to the letters of credit.

3. The Bank represents that it will act in a fiduciary capacity with respect to the Participants' rights under the Notes and that it is fully aware of its fiduciary responsibilities under the Act. The Bank states that in this fiduciary capacity it will hold the Notes on behalf of the Accounts, collect interest and principal due under the Notes, enforce all terms and conditions of the Notes, determine in its sole discretion the acceptability of banks as issuers of letters of credit to secure the Loans, and enforce such letters of credit in the event of the Employer's default on the terms of the Notes. As holder of the Notes, the Bank will also enforce the Notes' interest-rate provisions and make appropriate determinations with respect to prevailing fair market rates of interest. The Bank states that it has evaluated the proposed Loans and has determined

[1] In this proposed exemption, the Department expresses no opinion as to whether the Lease will satisfy the requirements of PTE 78–6.

[2] In this proposed exemption, the Department expresses no opinion as to whether the Lease will or will not constitute a violation of section 406(b) of the Act.

that the proposed interest rate thereunder will not be more favorable to the Employer than the Employer could obtain in dealing at arm's length in a standard commercial setting and that such proposed interest rate is commensurate with or higher than the rate charged by major commercial banks making such loans in the New York City area.

4. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) Each Loan will be a directed investment by an individual Participant and will be payable upon demand by the Participant after the Loan's first year; (2) The Loans will be evidenced by the Notes, which will be secured by letters of credit for the full amount of the indebtedness thereunder; (3) The interests of the Participants with respect to enforcement of the Notes will be represented by the Bank, an independent fiduciary which will also approve the issuers of letters of credit securing the Notes; and (4) The Notes will bear interest at a rate which the Fiduciary has determined to be commensurate with or higher than the rate charged for such loans by commercial banks in New York City.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

National Bank of Alaska Common Trust Fund "A" (the Fund) Located in Anchorage, Alaska

[Application No. D-8498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of six secured promissory notes (the Notes) by the Fund to the National Bank of Alaska (the Bank), a party in interest with respect to the Fund, for the greater of: (1) The outstanding principal of the Notes, plus the accrued interest owing on the Notes on the date of the Sale, or (2) the fair market value of the Notes as determined by a qualified, independent appraiser on the date of the Sale.

Summary of Facts and Representations

1. The Bank is a national banking association which is organized under the laws of the United States of America and regulated by the Comptroller of the Currency. It is a full-service bank with 56 branches in 29 communities throughout Alaska, plus an office in Seattle, Washington. As of September 30, 1990, the Bank had total deposits of $1.64 billion and total assets of $2.1 billion. It is a wholly-owned subsidiary of National Bancorp of Alaska, a Delaware corporation, that is a registered bank holding company under the Bank Holding Company Act of 1956. Both the Bank and its parent holding company maintain their principal office at 301 West Northern Lights Boulevard, Anchorage, Alaska.

2. The Fund was established by the Bank in 1971 as a collective investment fund to be an investment medium for employee benefit plans (the Plans) that are exempt from federal income taxation. It has been operated by the Bank as its trustee in accordance with a master plan. The Fund is subject to the rules and regulations of the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks. The master plan for the Fund provides, *inter alia*, that the Board of Directors of the Bank may at any time in its sole discretion, direct the termination and liquidation of the Fund. The master plan further provides that after proper notice of termination is given to the Plans participating in the Fund, no additional Plans are admitted and all assets of the Fund are transferred to a liquidating account for distribution to each of the participating Plans. The distribution is made in accordance with the pro rata interest of each Plan in the liquidating account.

The applicant represents that audited financial statements for the Fund disclosed the total assets in the Fund decreased from the sum of $27,300,237 to $1,931,429 during the period from December 31, 1980, to December 31, 1989. Thirty-nine Plans were represented to be invested in the Fund, as of July 13, 1990. The applicant also represents that unaudited financial statements disclosed that the net assets of the Fund totalled $2,025,719.92 as of September 30, 1990. The Fund included a bond fund with a market value of $270,325.90; a money market fund with a market value of $532,143.64, and the seven secured notes with a market value of $1,223,250.38. As of October 19, 1990, one of the secured notes was sold to an independent third-party for $234,594.77, which was the unpaid principal and accrued interest.

3. The application for exemption was submitted by the Bank on behalf of itself and the Fund. Since December 31, 1980, the Fund has been "frozen" as to new entrants. In 1989, the Bank decided to terminate and liquidate the Fund, and thereupon in April commenced an orderly disposition by selling $5.2 million of the assets of the Fund. The Bank has been unable to dispose of the remaining Notes. Attempts at finding unrelated third-party purchasers of the Notes have not been successful. Contacts by the Banks have been made during 1988 and 1989 with financial institutions in Alaska, Washington, Oregon, Pennsylvania, and California. Offers to purchase the Notes have been at prices significantly discounted from their outstanding balances and accrued unpaid interest.

The Anchorage, Alaska office of Price Waterhouse appraised the Notes, as of June 27, 1990, and concluded that the terms of the offer made by the Bank to purchase the Notes for the outstanding principal balance plus accrued interest exceeded the fair market value of each of the Notes. Price Waterhouse represented that it examined each of the loan agreements, the value of the underlying collateral, the current loan balances, the current loan status, and other information relevant to the performance of the loans and their collectability. Also, Price Waterhouse concluded that no independent third-party would match or better the offer by the Bank to purchase the Notes.

Therefore, the Bank represents that it will purchase the Notes for the greater of either the outstanding principal of the Notes and the accrued interest owing on the Notes on the date of the Sale, or the fair market value of the Notes on the date of the Sale as determined by a qualified, independent appraiser. The Bank also represents that there will be no expense to the participants of the Fund for the Sale of the Notes.

The Notes and their respective unpaid principal balances and accrued interest, as of September 30, 1990, which are involved in the proposed transaction are designated by the applicant to be (a) Puget Sound Town Square PSMS #97570940, $412,767.20; (b) Sabey-Waitz Mortgage CCM #008-03644, $18,437.95; (c) Dennis Wise Mortgage ML #027596, $292,769.61; (d) Kreider-Atkins CML #0152346219, $48,944.15; (e) Lakeside Mortgage ML #047538, $217,234.26; and (f) Eubanks Mortgage ML #060305, $30,687.18.

The applicant represents that the makers of the Notes are not parties in interest with respect to the Plans which are invested in the Fund.

The Bank desires to complete the total liquidation of the Fund as soon as possible. The cash proceeds from the Sale of the Notes, along with the proceeds from the liquidation of the bond fund and the money market fund, will be distributed at the same time to the participating Plans in accordance with their pro rata interests in the Fund, completing the total liquidation of the Fund.

The applicant represents that the exemption will permit a one-time cash transaction that can be easily verified and will benefit the Plans and their participants and beneficiaries by maximizing a return to the Plans and permitting enhanced reinvestments of the assets of the Plans.

This exemption has no effect on the Department's claim for relief in *Martin v. National Bank of Alaska* CA No. A86–548, United States District Court, District of Alaska, except to the extent that nothing herein shall preclude the court or the parties from considering money received by the collective trust fund as a result of the transactions described in this exemption for the purpose of determining losses suffered as a result of the transactions alleged to be in violation of ERISA in that litigation.[3]

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (a) the Sale of the Notes will be a one-time transaction for cash; (b) the participating Plans invested in the Fund will not be required to incur any expense for the Sale; (c) the Fund will sell the Notes to the Bank for an amount equal to the greater of either the outstanding principal balance owing on the Notes plus accrued interest at the time the Sale is consummated or the fair market value of the Notes as of the date of the Sale; (d) the Notes will be appraised on the date of the Sale by a qualified, independent appraiser; and (e) the Sale of the Notes will permit the liquidation and termination of the Fund and participating Plans will be able to reinvest their proceeds in improved and new income-producing assets.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–8881 (This is not a toll-free number.)

[3] The Department notes that this exemption application does not address the separate prohibited transactions involving the origination, placement and servicing of any loan at issue in *Martin v. National Bank of Alaska*, CA 86–548, United States District Court, District of Alaska.

Columbia Artists Management Inc. Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–8562]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth under 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective September 22, 1989, if the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The sale, on September 22, 1989, by the Plan of a note (the Note) to Columbia Artists Management, Inc. (the Employer), the sponsor of the Plan, and (2) the assignment on the same date by the Plan to the Employer of a mortgage (the Mortgage) on a parcel of real estate (the Land) in Quogue, New York, which secures the Note; provided that the terms of the transactions were no less favorable to the Plan than similar transactions negotiated at arm's length with unrelated third parties.[4]

Summary of Facts and Representations

1. The Plan, a discretionary defined contribution profit sharing plan, was established on September 29, 1961, and subsequently amended to comply with the provisions of the Act and Code. As of December 31, 1988, the Plan had 120 participants and assets totaling $2,809,349. The Plan provides for three trustees (the Trustees) who are appointed by the Employer. On December 31, 1988, the Trustees were Robert E. Biasotti (Mr. Biasotti), Ronald A. Wilford (Mr. Wilford), and Lee H. Robinson. All the Trustees are directors and officers of the Employer, one of the largest managers of classical music artists in the United States, with business offices located at 165 West 57th Street, New York, New York. Two of the three Trustees are shareholders of the Employer. Mr. Biasotti holds 11,820 shares, or 4.8% of the 247,135 outstanding shares of the Employer. Mr. Wilford holds 101,671 shares, or 41.1% of the outstanding shares of the Employer.

2. In September 1987, the Employer sold the Land, located at 34 Elizabeth Lane, Quogue, New York, to William Hautmann (Mr. Hautmann), an unrelated party to the Employer or the Plan. Mr. Hautmann, a local builder, engages in the development of real estate in Quogue, New York, a vacation area situated on Long Island.

The purchase terms included a $60,000 payment in cash and the Note payable to the Employer in the amount of $120,000. The terms of the Note called for seven (7) quarterly payments of interest only. The interest rate on the Note was subject to adjustment every ninety (90) days in an amount equal to two percent (2%) over the prime interest rate on such ninetieth day. It is represented that the initial interest on the Note was 10.75% which rose to 13.50% by the end of the term of the Note. The first interest payment was due on December 24, 1987, and the last interest payment was due on June 24, 1989. One final payment of the $120,000 principal and accrued interest was due on August 24, 1989. In addition, the Note provided for immediate acceleration upon the sale of the Land and optional acceleration, if Mr. Hautmann failed to make a payment within fifteen (15) days of the date such payment was due.

It is represented that the Note was secured by the Mortgage on the Land. Both the Note and the securing Mortgage were duly recorded. As provided under the terms of the Mortgage, the Employer agreed to subordinate the Mortgage to the North Fork Bank and Trust Company (the Bank) in Mattituck, New York, in connection with a construction loan in the amount of $320,000 given to Mr. Hautmann for the purpose of building on the Land a new, 3,200 square foot single family residence, including tennis court and pool (the Residence).

3. On December 18, 1987, as part of its 1987 contribution, the Employer contributed the Note to the Plan and also assigned the Mortgage to the Plan.[5]

[4] For purposes of this proposed exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[5] The applicant has not requested exemption for the contribution of the Note nor the assignment of the Mortgage, because: (1) The plan is a discretionary profit sharing plan, (2) the Employer's decision to make the 1987 contribution to the Plan was completely voluntary, and (3) the contribution did not relieve the Employer of any obligation to the Plan. In the opinion of the applicant, such an in-kind voluntary contribution to a profit sharing plan does not constitute a prohibited transaction. In support of this conclusion, the applicant cites Advisory Opinion 90–05A issued by the Department on March 29, 1990. The Department herein is not granting relief for the contribution of the Note or the assignment of the Mortgage to the Plan, nor is the Department expressing an opinion on the conclusion drawn by the applicant that no prohibited transaction occurred.

Further, the Department, herein, is not expressing any opinion as to whether the Trustee's decisions on behalf of the Plan to accept the contribution of the Note and the assignment of the Mortgage on December 18, 1987; and/or to continue holding the

Continued

It is represented that the total contribution for the plan year ending August 31, 1987, was $125,000 and consisted of the Note for $120,000, plus accrued interest of just over $3,000 and cash of slightly less than $2,000. At the time of the contribution, the applicant did not obtain an appraisal of the value of the Note, because of the short time span between the date the Note was made (September 24, 1987) and the date it was contributed (December 18, 1987).

4. On December 24, 1987, six (6) days after the Note had been contributed and the Mortgage assigned to the Plan, Mr. Hautmann failed to make the first interest payment then due. On March 24, 1988, Mr. Hautmann failed to make the second interest payment when due. However, he did make a payment of $6,750 on June 25, 1988, leaving an interest balance due of $3,150. Thereafter, it is represented that Mr. Hautmann made one payment of interest in the amount of $6,000 on December 12, 1988, but failed to make any other payments when due. As of August 24, 1989, the full amount of the principal, plus $15,900 of accrued interest became due on the Note. In addition, as of August 24, 1989, it is represented that Mr. Hautmann had made no principal or interest payments on the construction loan from the Bank. Further, it is represented that the construction of the Residence was not completed as of that date.

5. After holding the Note on behalf of the Plan since December 1987, in the summer of 1989, one of the Trustees, Mr. Biasotti, visited the building site and spoke with Mr. Hautmann and a number of local real estate agents with respect to the amount of money that would be needed to complete the Residence and the estimated selling price of the Land and the Residence upon completion of the construction. It is represented that he reported to the other Trustees that the completion of the Residence would require the investment of another $50,000 and that the fair market value of the Residence and the Land when completed would be less than the amount of the aggregate debt owed by Mr. Hautmann to the Plan and to the Bank. On this basis, the Trustees determined that it would be inappropriate to provide Mr. Hautmann with additional money to complete construction of the Residence and that action should be taken to prevent further loss to the Plan. Because of the subordinated status of the Mortgage and the fact that the Residence was incomplete, the Trustees believed it unlikely that the Plan would recover the face amount of the Note or the accrued but unpaid interest thereon. Further, the Plan would in all likelihood be required to incur substantial legal expenses in order to protect its interests. In addition, the Trustees represent that sale of the Note to an unrelated third party would likely require a substantial discount. Accordingly, the Trustees determined that it would be in the interest of the Plan and its participants for the Employer to purchase the Note.

It is represented that the Trustees were advised by counsel that the sale of the Note and the assignment of the Mortgage by the Plan to the Employer would constitute prohibited transactions under the Act if entered into prior to obtaining an administrative exemption from the Department. Counsel advised the Trustees that, in order to possibly obtain a retroactive administrative exemption, the transactions would have to be directed by an independent fiduciary. Accordingly, the Trustees determined to proceed with such transactions as soon as an independent fiduciary, acting on behalf of the Plan, so directed, and to seek retroactive relief from the Department.

It is represented that simultaneously with such determination, the Trustees contacted James Levy, MAI, SRPA, ASA (Mr. Levy), president of Appraisers and Planners, Inc., in New York, New York to appraise the Land and the Residence and to serve a independent fiduciary with respect to the Plan.

On September 22, 1989, the Trustees, on behalf of the Plan, sold the Note to the Employer and assigned the Mortgage to the Employer for cash equal to the face amount on the Note of $120,000, plus the $15,900 in accrued and unpaid interest due on the Note. The Trustees believe that the transactions were in the interest of the Plan, because: (1) The Plan disposed of the non-performing Note, (2) the Plan was able to invest the cash proceeds from the transactions in other investments which produced income, (3) the Plan avoided the lengthy delays which would have arisen as a result of any foreclosure proceedings, and (4) the Plan avoided the losses which would have resulted from foreclosure, given the fair market value of the unfinished Residence and the Land, the amount of the debt owed by Mr. Hautmann, and the subordinated priority of the Plan's claim under the terms of the Mortgage.

The Trustees state that the granting of this exemption is administratively feasible, because the sale of the Note and the assignment of the Mortgage were one-time discrete transactions which required no continuing relationship between the Plan and the Employer. Further, the Trustees represent that the terms of the transactions were protective of the Plan, because the transactions were undertaken under the authority, direction, and supervision of Mr. Levy, acting as independent fiduciary on behalf of the Plan.

6. Mr. Levy is a MAI, and a member of various professional organizations, such as the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, and the American Society of Appraisers. Mr. Levy represents that he is qualified to serve as independent fiduciary because he has, for twenty-seven (27) years, actively engaged in the real estate business, specializing in appraisals of real property and mortgages. Mr. Levy is independent in that he has no present or prospective interest in the Residence or the Land and has no personal interest or bias with respect to the parties involved. It is represented that Mr. Levy was advised by counsel, Rosenman & Colin, of his responsibilities as independent fiduciary, and by a letter to the Plan Trustees acknowledged his understanding and acceptance of those responsibilities.

After inspecting the Residence and the Land, Mr. Levy estimated the adjusted selling price of the Residence at $335,000. It is represented that at the time of this appraisal, the indebtedness secured by the value of the Residence and the Land consisted of the amount of the construction loan plus accrued interest owed by Mr. Hautmann to the Bank, and the amount of the Note plus interest owed by Mr. Hautmann to the Plan. In the opinion of Mr. Levy there was a soft real estate market for this type of property and should the Residence not be sold in the near future or should it go into foreclosure, considerable time and expense will result before the two mortgages are satisfied. Accordingly, Mr. Levy determined in his report to the Trustees dated September 22, 1989, that the fair market value of the Note and the Mortgage securing the Note was not more than $120,000, the face amount of the Note, pluse accrued interest due but unpaid.

It is represented that Mr. Levy caused the Plan to enter into the transactions only after reviewing the audited financial statement of the Plan, dated December 31, 1988, the documents prepared in connection with the transactions, as well as those underlying the Note and the Mortgage. He also

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Note and the Mortgage after the default on December 24, 1987, violated any provision of part 4 of title I of the Act.

considered the delays and expenses involved in recovering on the Mortgage if the Plan took action with respect to the default of Mr. Hautmann on the Note. Mr. Levy determined that the transactions were in the best interest of the Plan because: (1) The Plan received not less than fair market value for the Note and the Mortgage; (2) the Plan sustained no loss as a result of any delinquent interest payments on the Note, as such were added to the sales price; and (3) the Plan avoided the delay, expense and negative impact on its rate of return which would result from the continued holding of the Mortgage following the default.

7. In summary, it represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Note and the assignment of the Mortgage entailed one-time transactions for cash;

(b) The sales price was not less than the fair market value, as determined by an independent qualified appraiser;

(c) An independent fiduciary determined that the transactions were in the interest of and protective of the Plan;

(d) The Plan disposed of a non-performing Note and invested the proceeds in more profitable assets.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Futhermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of March, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–7130 Filed 3–25–91; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.45(b)(2) (iii) and (iv) to Detroit Edison Company (DECo, the licensee), for operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

A revision to 10 CFR part 55, "Operators' Licenses," became effective on May 26, 1987, which established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i–1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated January 31, as supplemented March 21, 1991, DECo requested a temporary exemption from the schedule requirements for certification of a plant-referenced simulator. DECo intends to significantly improve its simulator by upgrading major hardware and software components of the simulator complex. As such, DECo has requested additional time (i.e., until December 31, 1991) before completing final certification of the simulator.

The proposed action is in accordance with 10 CFR 50.12 and 55.11, "Specific Exemptions," and is based upon the informatioin provided to the NRC in the licensee's request dated January 31, 1991 as supplemented March 21, 1991.

The Need for the Proposed Action

The proposed exemption is needed to avoid the unnecessary regulatory exercise of certifying the existing simulator, with its host of exceptions, rather than waiting nine months and certifying the newly upgraded simulator.

Enviromental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that the exemption does not involve a significant hazards consideration. The exemption only delays final certification of the simulator until upgrades are completed. This effort does not involve a significant increase in the probability or consequences of an accident, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. The exemption will merely defer the required administrative burden of reporting that certification is complete for a nominal period of time to allow the licensee an opportunity to more fully comply with the spirit of the rule. In the meantime, operators will continue to be trained and examined on the existing simulator as they have since 1976. Final certification of the new simulator and compliance with 10 CFR 55.45 shall be accomplished by December 31, 1991.

With regard to potential non-radiological impacts, the proposed exemption does not involve a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the

Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that the enviromental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would still result in operators being trained and examined on the current facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Fermi-2 facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated January 31, as supplemented March 21, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 21st day of March 1991.

For the Nuclear Regulatory Commission.

John Stang,

Acting Director, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–7109 Filed 3–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR 55.45(b)(iii) and (iv) to Florida Power Corporation (the licensee), for the Crystal River Unit 3 Nuclear Generating Plant, located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed exemptions would (1) allow the licensee an extension from March 26, 1991 to September 27, 1991 to submit Form NRC–474, "Simulation Facility Certification," and (2) allow the licensee to use the Crystal River 3 simulator for administration of the simulation facility portion of the NRC-administered requalification test before the facility is certified.

The Need for the Proposed Action

The proposed exemptions are needed in order to permit utilization of the simulator facilities to enhance operator performance and plant safety.

Environmental Impacts of the Proposed Action

The proposed exemptions do not involve any measurable environmental impacts since plant configuration and operation are not changed. Thus, the proposed exemptions will not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce environmental impacts nor enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Crystal River Unit 3 Nuclear Generating Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with any other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for exemptions dated January 3, 1991, which is available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC, and at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 21 day of March 1991.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–7234 Filed 3–25–91; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to receive feedback from those in attendance on their concerns about our overall approach and the potential impact of our policies on their operations, as well as feedback on differences that may exist on technical issues. NRC staff will provide information on on-going programs and potential new initiatives as a basis for discussion. Attention will be focused on differences in points of view on issues in an effort to understand the divergent views and to communicate ideas that may possibly provide resolutions to issues to be pursued after the meeting.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. NUMARC is acting as coordinator of industry's participation in the conference. Three plenary sessions are planned, each of which will be followed by four breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: The conference will be held May 7 and 8, 1991.

ADDRESSES: The conference will be held at The Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036, Telephone (202) 347–3000.

FOR FURTHER INFORMATION CONTACT: S. Singh Bajwa, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1231.

SUPPLEMENTARY INFORMATION:

Registration

There is an advanced registration fee of $225.00 before April 26, 1991 and $250.00 after April 26, 1991. Questions regarding registration should be directed to Science Applications International Corporation, 1710 Goodridge Drive, Mail Stop Tower 2–5–1, McLean, Virginia 22101, ATTN: Ms. Susan C. Hope, Telephone (703) 448–6362.

Participation

This conference is open to the general public; however, advance registration is required.

The following is the preliminary program for the conference:

Tuesday, May 7, 9 a.m.–5:15 p.m.

1. Introductory and Opening Remarks.
2. Regulatory Trends:

Morning Plenary Sessions
Round Table Breakout Sessions
(1) Integrated Regulatory Requirements Implementation Schedule (IRRIS)
(2) Electrical Distribution Systems Functional Inspections (EDSFI)
(3) Motor Operated Valves/Check Valves (MOV/CV)
(4) Decommissioning

3. Luncheon Speaker: Commissioner James R. Curtiss.
4. Operational Practices:

Afternoon Plenary Sessions
Round Table Breakout Sessions
(1) Improved Technical Specifications
(2) Incident Response
(3) Accident Management
(4) Pressure Vessel Integrity and Annealing Experience

5. Dinner Speaker: Commissioner Forrest J. Remick, 7 p.m.–9 p.m.

Wednesday, May 8, 8:30 a.m.–4:45 p.m.

1. Standard Plant Design Certification:

Morning Plenary Sessions
Round Table Breakout Sessions
(1) Events Analysis
(2) Requalification Exams and Initial Operator Exams
(3) Early Site Review Part 100 and Appendix A Changes
(4) Steam Generator Issues

2. Luncheon Speaker: Chairman Kenneth M. Carr.
3. Round Table Breakout Sessions:

(1) Equipment Operability
(2) Enforcement
(3) License Renewal
(4) Shutdown Risks/Inter-System LOCA

4. Closing Panel: 3:30 p.m.–4:45 p.m.

Note: There will be a question and answer period after each session.

Dated in Rockville, Maryland this 21st day of March 1991.

For the Nuclear Regulatory Commission.

John T. Larkins,

Chief, Planning, Program, and Management Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 91–7110 Filed 3–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant, Unit 1); Exemption

I

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees) are the holders of Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility) at steady state reactor power levels not in excess of 3579 megawatts thermal. The license provides, among other things, that the plant is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility is a boiling water reactor located at the licensee's site in Lake County, Ohio.

The revision to 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i–l), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certificied or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated November 21, 1989, as supplemented by letters dated January 30, 1990, and February 12, 1991, the licensees requested an exemption concerning the schedular requirements for certification of a plant-referenced simulator.

II

Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees submit a certification for use of a simulation facility consisting solely of a plant-referenced simulator no later than 46 months after the effective date of this rule, that is, by March 26, 1991, by filing Form NRC–474, "Simulation Facility Certification." On November 21, 1989, as supplemented by letters dated January 30, 1990, and February 12, 1991, the licensees requested an exemption from the filing requirements of 10 CFR 55.45(b)(2)(iii), to allow for the submittal of Form NRC–474 after March 26, 1991.

The licensees intend to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. The licensees propose to submit Form NRC–474 no later than June 28, 1991, following completion of vendor and licensee acceptance testing but prior to shipment of the simulator from the vendor facility.

The licensees initially planned to upgrade the existing Perry simulator to meet the certification requirements. However, after determining the required scope of the upgrade and evaluating vendor proposals, it was determined that these initial plans were not feasible. Based upon the certification requirements and Perry's training needs, the licensees decided to replace the existing similator and to delay certification until the new simulator is operational. The exemption was requested because the replacement simulator will not be ready for certification by March 26, 1991.

In August 1987, 3 months after the effective date of 10 CFR 55.45, a qualification plan for certification of the existing simulator was approved by the licensees. Within that plan, it was noted that the majority of the simulator discrepancies identified at that time were concerned with logic and human factors, rather than dynamic response.

The Perry plant completed start-up testing and began commercial operation in November of 1987. In December 1987, the licensees began the analysis of start-up test data for comparison to simulator performance and it soon became apparent that there were significant dynamic response differences between

plant and simulator. Procedures for certification of the existing simulator were developed and in place by March 1988, and implementation of those procedures was underway.

As 1988 progressed, the following simulator discrepancies emerged from comparison of simulator performance to plant data: (1) Capability to accuately simulate required normal plant evolution dynamics was inadequate due to limitations in reactor kinetic/thermohydraulic and feed flow models and numerous deficiencies of lesser magnitude; (2) Substantial corrections to system logic were required but could not be implemented due to computer capacity limitations and; (3) The ability to accurately model malfunctions needed to simulate abnormal and emergency events was limited due to outdated model stuctures, computer processing time and capacity limitations, and the shortcomings of the reactor kinetics/thermohydraulic, feed flow response and containment/drywell models.

By mid-1988, the need for an extensive upgrade of the existing simulator was recognized and a specification for the upgrade was prepared. The scope of the upgrade included replacing the computer complex and the instructor station, correcting the simulation software deficiencies for the key system models and providing a Configuration Management System. A request for proposals was issued in October 1988, bids were returned in December 1988, and proposal evaluations were completed in February 1989.

During evaluation of vendor proposals for a simulator upgrade, factors emerged which prompted the licensees to re-evaluate the alternatives (upgrade vs replace) for meeting simulator certification requirements and training needs and ultimately resulted in the decision to replace the simulator. These factors included:

—Certification risks associated with proposed upgrades,
—Training downtime associated with proposed upgrades,
—Outdated input/output devices and limited availability of spare parts,
—The cost of a simulator upgrade relative to the cost of simulator replacement, and
—Two vendors refusing to bid based on the assertion that an upgrade could not be guaranteed to yield certifiable performance.

III

The Commission has determined that pursuant to 10 CFR 55.11, this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of approximately 3 months from the March 1991 date for submittal of the Perry simulation facility certification. Good faith efforts to comply with the regulation were made as follows:

(1) Prior to the re-evaluation of alternatives leading to the decision to replace the simulator, the licensees had planned and were working toward certification of the existing simulator.

(2) In March 1989, replacement was recommended based on the re-evaluation of alternatives.

(3) In April 1989, simulator replacement proposals were requested.

(4) Bid evaluations were completed in May 1989.

(5) On June 1, 1989, a contract was awarded and work on the replacement simulator was started with a schedule for completion in 26 months.

(6) The replacement simulator will be available for use in the first operating tests scheduled after May 26, 1991. These tests are scheduled for February 1992. Therefore, no exemption is required from § 55.45(b)(2)(iv), which states that "The simulation facility portion of the operating test will not be administered on other than a certified or an approved simulation facility after May 26, 1991."

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(iii) for submittal of Form NRC–474, "Simulation Facility Certification." This exemption is effective until June 28, 1991.

Pursuant to 10 CFR 51.32 the Commission has determined that the issuance of this exemption will have no significant impact on the environment (56 FR 10579) March 13, 1991.

The licensee's initial exemption request dated November 21, 1989, the Commission's request for additional information dated January 12, 1990, the licensee's response to the request for additional information dated January 30, 1990, and the licensee's revised request dated February 12, 1991, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Perry Public Library, 3752 Main Street, Perry, OH 44081.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 19th day of March 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–7111 Filed 3–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–14827, License No. 34–18309–01MD EA 90–053]

Syncor International; Order Imposing Civil Monetary Penalties

Syncor International, Blue Ash, Ohio (Licensee) is the holder of Byproduct Materials License No. 34–18309–01MD originally issed by the Nuclear Regulatory Commission (NRC or Commission) on December 12, 1978 to Pharmatopes Incorporated. Byproduct Materials License No. 34–18309–01MD was changed from Pharmatopes Incorporated to Syncor International on June 15, 1983 at which time Syncor International purchased a facility of Pharmatopes Incorporated located at Blue Ash, Ohio. The license authorizes the Licensee to prepare and dispense radiopharmaceuticals to authorized recipients in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during the period of July 6 through September 15, 1988, and a subsequent investigation of the Licensee's activities was conducted during the period of August 19, 1988 through January 18, 1990. The results of the inspection and the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated August 24, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice by letter dated September 17, 1990. In its response, the Licensee admitted Violations I.A and II, but requested full mitigation of the civil penalties associated with those violations. The Licensee denied Violation I.B.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered that:*

The licensee pay civil penalties in the amount of $20,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.B of the Notice of Violation referenced in Section II above, and

(b) Whether, on the basis of Violations I.A., I.B., and II as set forth in the Notice of Violation referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland this 18th day of March 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On August 24, 1990, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection and a subsequent NRC investigation. Syncor International (Licensee) responsed to the Notice on September 17, 1990. In its response, with respect to violations for which a civil penalty was proposed, the Licensee admitted Violations I.A and II. The Licensee denied Violation in I.B. In addition, the Licensee requested mitigation of the civil penalties. The NRC's evaluation and conclusion regarding the Licensee's requests are as follow:

Violations Assessed Civil Penalties

I. Restatement of Violation I.A.

License Condition No. 19 requires, in part, that the licensee process radioactive material with reagent kits in accordance with the instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the reagent kit.

The brochure furnished by the manufacturer of the Tc–99m Medronate Reagent Kit used by the licensee on April 28, 1988 for compounding Tc–99m methylene diphosphonate (MDP) for bone imaging requires that sodium pertechnetate Tc–99m be slowly injected into the reaction vial.

Contrary to the above, on April 28, 1988, the licensee procesed sodium pertechnetate Tc–99m with Tc–99m Medronate reagent kits in the preparation of Tc–99m MDP by injecting saline into the reaction vials supplied by the manufacturer, withdrawing the contents, adding the contents to a larger evacuated vial, and then adding sodium pertechnetate Tc–99m to the contents.

Summary of Licensee's Response to Violation I.A

The Licensee admited the violation occured as stated; however, the Licensee requested mitigation of the civil penalty based on its corrective actions to prevent recurrence and good past performance. The Licensee characterized its corrective actions as very extensive, and stated that those actions included: issuance of various memoranda which were sent to all of its operating locations concerning misadministrations and falsification of records; probation of employees; training of employees; and discontinuing the use of "super kits." As additional corrective action, the Licensee requested that the NRC amend its license to include quality control checks of radiopharmaceuticals. As further corrective action, the Licensee implemented dual verification of licensed activities. The Licensee also stated that an extensive investigation was undertaken as a result of the NRC Order Modifying License and total compliance with the Order was achieved. In addition to the above, the Licensee requested mitigation for good past performance based on the fact that no violations were identified in an August 1985 NRC inspection and based on the Licensee's contention that the June 1984 inspection was conducted at its request based on the self-identification of the violations.

The Licensee also requested mitigation of the civil penalty based on what the licensee terms a commitment by NRC officials at the April 27, 1990, enforcement conference. The Licensee states that, during that conference, NRC officials indicated that a citation for the violation involving the use of "super kits" would not be issued. Furthermore, the Licensee objected to the statement in the Notice that the use of a "super kit" was a major contributing factor which resulted in 14 diagnostic misadminstrations. The Licensee contended that the misadministrations occurred as a result of human error rather than the use of a "super kit", and that an error of this type was not willful.

NRC's Evaluation of Licensee's Response to Violation I.A.

With regard to the Licensee's requet for mitigation based on its corrective action and past performance, NRC previously considered the information provided in the Licensee's response. Specifically, the NRC agrees that the Licensee transmitted many memoranda to its pharmacies and the memoranda concerned the misadministrations which occurred on April 28, 1988. The NRC acknowledges that the Licensee issued warnings to its employees regarding the failure to conduct activities in accordance with license requirements and the falisification of records. The NRC also agrees that the Licensee complied with the Order Modifying License. However, while the Licensee took some corrective actions prior to the involvement of the NRC, those actions were not complete nor were they broadly implemented, as evidenced by the fact that NRC found it necessary to issue an Order Modifying License on October 12, 1988.

Concerning good past performance, the NRC agrees that no violations were identified in August 1985. However, the June 1984 inspection was the direct result of the Licensee's distribution from its facility at Blue Ash, Ohio, on May 18, 1984 of radiopharmaceuticals contaminated with molybdenum-99. While NRC acknowledged the Licensee's actions and assistance in that case, civil penalties in the amount of $8,500 were imposed for reasons related to the Licensee's performance, as detailed in EA 84-73. The Licensee paid the civil penalties on January 22, 1985. Therefore, mitigation of the civil monetary penalities for the current violations is not appropriate in view of the Licensee's past performance.

The Licensee also requests mitigation based on the fact that an NRC official previously indicated that there would be no citation for the violation involving failure to follow the instructions in a manufacturer's product brochure. As discussed in NRC's August 24, 1990 letter transmitting the Notice, it is true that NRC issued this citation after an NRC official stated at the enforcement conference that this citation would not be issued. However, the licensee admits that the violation occurred. Since the violation is correct, there is no basis for mitigation.

The Licensee argues that the initial compounding of the methylene diphosphonate (MDP) kit using the method stated in Violation I.A. did not directly lead to misadministrations. That argument notwithstanding, that method was a violation of a License Condition and does involve willfulness, and for these reasons, the civil penalty is appropriate. Further, later the same day, when attempting to compound additional technetium 99m (Tc-99m) MDP using the method stated in Violation I.A., a pharmacist, through human error, failed to add MDP reagent. Regarding that incident, had the manufacturer's instructions been followed, the Tc-99m soldium pertechnetate would have been added directly to the reaction vial supplied by the manufacturer. The reaction vial supplied by the manufacturer is shipped with MDP reagent in the reaction vial, and the addition of Tc-99m sodium pertechnetate to the vial causes the formation of Tc-99m MDP without the need for the pharmacist to add MDP reagent. Therefore, the failure to follow the manufacturer's instructions for the compounding of Tc-99m MDP did contribute in substantial part to the occurrence of the misadministrations. NRC finds that this violation involves willfulness not because the pharmacist, through human error, forgot to add MDP reagent, but rather because the use of compounding methods other than the methods specified in the manufacturer's instructions had been previously identified at the Blue Ash facility through internal audits, and yet management, including the former pharmacy manager, failed to implement corrective action to ensure that such practices were discontinued.

II. Restatement of Violation I.B.

License Condition No. 23 of NRC Byproduct Material License No. 34-18309-01MD requires that licensed materials be possessed and used in accordance with the statements, representations, and procedures contained in certain referenced applications and letters, including the application dated November 20, 1983.

The application dated November 20, 1983, states in Attachment 2, Item K.2, that sodium pertechnetate elutions will be checked routinely for alumina breakthrough and that no eluate will be used if it exceeds 15 micrograms of alumina per milliliter of eluate.

Contrary to the above, sodium pertechnetate elutions were not routinely checked for alumina breakthrough and the resulting eluate, with an unknown alumina content, was used for preparation and dispensing of technetium-99m (Tc-99m) radiopharmaceuticals in at least the following examples.

1. On August 8, 1988, six elutions of sodium pertechnetate from the molybdenum-99/technetium-99m generator were made but five of the six elutions were not checked for alumina breakthrough and the resulting eluate, with an unknown alumina content, was used for the preparation and dispensing of radiopharmaceuticals.

2. On August 9, 1988, eight elutions of sodium pertechnetate from the molybdenum-99m/technetium-99m generator were made but seven of the eight elutions were not checked for alumina breakthrough and the resulting eluate, with an unknown alumina content, was used for the preparation and dispensing of radiopharmaceuticals.

Summary of Licensee's Response to Violation I.B.

The Licensee denied this violation. The Licensee contended that the statement that elutions will be checked "routinely" referred to what the Licensee characterizes as the routine in use in 1983 whereby, acording to the Licensee, only the first elution from molybdenum-99m/technetium-99m (Mo99-Tc99m) generators were routinely checked for alumina content, and it was not a routine practice to check each elution from a Mo99m-Tc99m generator. In addition, the Licensee was not aware of any instance within the past eight years in which the alumina content exceeded a quantity greater then 10 micrograms per milliliter eluate.

NRC's Evaluation of Licensee's Response to Violation I.B.

The NRC does not agree with the Licensee's interpretation or intended meaning of the statement referenced in the License Condition concerning the routine checking for alumina breakthrough. The November 20, 1983 license application referenced in the license condition also state that no eluate will be used if it exceeds 15 micrograms of alumina per milliliter of eluate. Without an alumina test following each generator elution, it would be impossible for the Licensee to determine whether it was in compliance with the license requirement that no eluate be used if it exceeds 15 micrograms of alumina per milliliter of eluate.

Contrary to the Licensee's assertion that the routine practice for checking for alumina was to do it only on the first elution of the generator, the pharmacist involved in the issue informed the NRC that the Licensee's corporate staff had instructed her in the performance of the alumina test. The pharamacist told the NRC that she "routinely" performed the alumina test for three or four weeks following her training by the ocrporate staff, then she began to do the check only on the first elution. She stated to the NRC, "I don't know why I ever stopped." In response to a specific question, "what do you mean by routinely?" the pharmacist replied, "like on every elution."

In further support of NRC's position: (1) The record form used by the Licensee at the time of violation includes a space to mark the alumina test result for every elution, not just the first elution. (2) The pharmacist admitted that she did not perform the alumina test on every elution, and that she entered falsified test results on the form to make it appear that she had performed the test on every elution. (3) The Licensee, at the enforcement conference, stated that it was improtant for a radiopharmacy to perform the alumina breakthrough test following each generator elution because the generator is eluted multiple times during the course of a day and the possibility of alumina breaking through increases with each subsequent elution. (4) At the enforcement conference, the Licensee did not object to the violation.

(5) The Syncor Regulatory Aduit Form, Rev. 6/87, requires an entry under Item H.3., "Alumina breakthrough performed on each elution of every generator prior to its use." (6) Prior to the violation, a number of Snycor Blue Ash employees received Syncor corporate training that the alumina breakthrough test was required on every elution. (7) Following the violation, when the Syncor Corporate Assessment determined that two out of 18 Syncor radiopharmacies audited did not perform alumina breakthrough checks on every elution, the Licensee indicated to NRC that the problem was corrected at the time of the assessment. (8) The manufacturer's brochure for the Medi-Physics Tc–99m generator in use the time of the violation states; "Each eluate of the generator should not contain more than * * * 10 micrograms of aluminum per milliliter of the generator eluate * * * which must be deterimined by the user prior to administration." Finally, this violation has two elements: (a) Sodium pertechnetate elutions were not routinely checked for alumina breakthrough, and (b) the resulting eluate, with an unknown alumina content, was used for the preparation and dispensing of radiopharmaceuticals. By the Licensee's own admission, the latter element clearly did occur.

III. Restatement of Violation II

10 CFR 30.9(a) requires information provided to the Commission by a licensee or information required by the Commission's regulations or license conditions be complete and accurate in all material respects.

License Condition No. 23 of NRC Byproduct Material License No. 34–18309–01MD requires that licensed material be used in accordance with statements, representations and procedures contained in certain referenced applications and letters, including the application dated November 20, 1983.

The application dated November 20, 1983 provides in Item 17, Appendix I that records will be kept of daily surveys of elution and preparation areas.

Contrary to the above, on at least one occasion in May or June 1988, the record kept of the daily survey of the licensee's elution and preparation areas was not accurate in that the survey readings were falsified by a licensee employee at the direction of a licensee management official.

Summary of Licensee's Response to Violation II

The Licensee admitted the violation occurred as stated, but requested remission or mitigation of the civil penalty based on extensive corrective action and good prior performance. The Licensee referenced its response to Violation I.A as the reply to Violation II. In addition, the Licensee stated that the individual involved only falsified one record and refused to falsify a second record. The manager who directed the employee to falsify the record was severely disciplined and subsequently resigned. The Licensee also contended that the violation was self-identified and reported to the NRC investigator.

NRC's Evaluation of Licensee's Response to Violation II

The NRC's evaluation of the Licensee's request for mitigation based on corrective action and prior performance is as previously stated in the NRC's Evaluation of Licensee's Response to Violation I.A.

The NRC agrees with the Licensee's observation that the individual who was involved in the falsification of the area radiation survey record did so only once, and later refused when she was asked to falsify a second record by the manager of the facility. Although it is commendable that the individual refused to falsify other records, the fact remains that the individual, at the request of a Licensee management official, did falsify a record required by the NRC. NRC also agrees that the involved individual informed the NRC investigator of the falsified record; however, the information was provided in response to specific questioning by the NRC investigator on the subject of record falsification. It is expected that Licensee representatives truthfully answer all questions posed by NRC inspectors or NRC investigators.

IV. Request for Mitigation of Civil Penalty

Summary of Licensee's Request for Mitigation

In addition to the previously stated requests for mitigation, the Licensee requested that all penalties be mitigated on the basis of prior good performances both at the Blue Ash facility and throughout the Syncor facilities nationwide.

The Licensee asserted that the NRC has stated that much of the cause for assessing the civil penalties is based on the premise that variations from the instructions in preparing Tc–99m tagged kit products have led to misadministrations. The Licensee agreed that using a "super kit" had the potential for causing more misadministrations, but disagreed that variations from the package insert in preparing the kit would in itself cause misadministrations.

Also, the Licensee recited NRC statistics indicating that nationwide only one diagnostic misadministration occurs out of every 8,333 doses injected during medical procedures. However, diagnostic misadministrations involving products of the Licensee averaged 1 per 50,000 procedures. The Licensee also stated that, at the suggestion of the NRC, Syncor retained a consultant in human factors engineering as part of its long range strategy.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee argues that the "super kit" did not cause the 14 misadministrations on April 28, 1988; however, as already explained, the NRC contends that it was a combination of human error and deviation from the manufacturer's instructions (use of the "super kit") which was responsible for the 14 misadministrations. Furthermore, while the Notice states that the violations are especially significant because the failure to follow the manufacturer's instructions contributed in substantial part to the misadministrations, the specific reason that civil penalties in the amount of $20,000 were proposed, as stated in the Notice, is to emphasize the significance that NRC places on the willful failure to follow NRC requirements and on the falsification of required documents.

Concerning the volume of the Licensee's activities and the fraction of related misadministrations, the NRC agrees that the number of misadministrations is limited when compared to the statistics for the nuclear medicine community at large. However, this is but one aspect of the Licensee's overall past performance, which has already been discussed, and does not offset NRC's concerns regarding the willful failure to follow NRC requirements and the falsification of required documents. The NRC recognizes that a larger organization may have a more difficult job in controlling licensed activities. Conversely, it must also have more resources to apply to management control. To assure that the public health and safety are protected, the Commission expects its requirements to be met by all licensees, regardless of their size or the volume of their activities.

V. NRC Conclusion

Based on the information presented by the Licensee and evaluated by the NRC, the NRC staff has concluded that

the violations occurred as stated and that there is no basis for mitigating the civil penalties. Consequently, the proposed civil penalties in the amount of $20,000 should be imposed.

[FR Doc. 91-7112 Filed 3-25-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Coverage for Non-Defense Contracts

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments on the application of cost accounting standards (CAS) coverage to negotiated non-defense contracts.

DATES: Comments must be in writing and must be received by May 28, 1991.

ADDRESSES: Comments should be addressed to Mr. Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-01.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone 202-395-3300).

SUPPLEMENTARY INFORMATION: Established pursuant to section 5 of Public Law 100-679, the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, 41 U.S.C., 422, the Cost Accounting Standards Board has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards (CAS) and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts and subcontracts with the United States.

Section 5(f)(2) of the OFPP Act Amendments statutorily extends CAS coverage to the non-defense contracts of the civilian procurement agencies. Previously, only national defense contracts were subject to CAS coverage on a statutory basis under the provisions of Public Law 91-379, 50 U.S.C., app. 2168. This coverage was also extended as a matter of policy to certain non-defense contracts (see Federal Acquisition Regulation part 30.101(b), 48 CFR 30.101(b)).

The purpose of this notice is to request public comments on the extension of CAS coverage by the board on a regulatory basis to non-defense contracts and subcontracts with the United States Government. In so doing, the board is carrying out the statutory requirements of section 5(f)(2) of the OFPP Act Amendments which specifies, in part, that:

Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies (emphasis added) and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States in excess of $500,000, other than contracts and subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation.

Accordingly, the board plans removal of the exemptions for non-defense contracts found at FAR 30.201-1 (b)(8) and (b)(9). The board does not intend, at this time, to remove any of the remaining exemptions currently applicable to CAS coverage (see 4 CFR 331.30 and FAR 30.201-1(b), 48 CFR 30.201-1(b) for applicable exemptions from CAS coverage). Therefore, even though the OFPP Act Amendments extend CAS coverage to non-defense contracts, existing exemptions, except for the cited non-defense exemptions, will continue to remain in place unless amended, rescinded or superseded by the board. These include, among others, exemptions for small businesses and educational institutions.

In addition, the board intends to raise the threshold for individual CAS contract coverage to cover only those contracts and subcontracts in excess of $500,000. This change will make the CAS individual contract threshold consistent with the amount specified in the OFPP Act Amendments. The raising of this threshold will be the subject of a future board rulemaking under the board's CAS recodification project (see 55 FR 48714, Nov. 21, 1990, for a discussion of this effort).

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91-7049 Filed 3-25-91; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Pay-for-Performance Labor-Management Committee; Meetings

The Office of Personnel Management announces the following meetings:

Name: Pay-for-Performance Labor-Management Committee.

Dates and Times: April 10 1991, 2 p.m. to 5 p.m.; May 6, 1991, 9 a.m. to 5 p.m.

Place: Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington DC 20415-0001.

Purpose of Meetings: To consider ways to strengthen the linkage between the performance of General Schedule employees and their pay.

Agendas: April 10, 1991—Introduction; committee organization; committee administration; comments and observations; public input; closing.

May 6, 1991—Committee goals and objectives; scope of inquiry; research and resources regarding performance-based pay; basic issues and challenges facing the committee; committee administration; comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The committee welcomes written data, views, or comments concerning pay-for-performance for General Schedule employees. All such submissions received by close of business April 3, 1991 will be provided to the committee members and included in the record of the April 10, 1991 meeting. Those received by close of business April 30, 1991 will be provided to the committee members and included in the record of the May 6, 1991 meeting.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at the April 10, 1991 meeting should submit a written request to be heard by close of business April 3, 1991. Likewise, those wishing to address the May 6, 1991 meeting should submit a written request by close of business April 30, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-7141 Filed 3-25-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28983; File No SR-DGOC-91-01]

Self-Regulatory Organizations; Delta Government Options Corp.; Notice of Proposed Rule Change Relating to Permissible Forms of Margin Deposits

March 18, 1991.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 12, 1991, Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Delta is filing herewith a proposed rule change relating to procedures for accepting U.S. treasury bills, notes, and bonds as margin.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is three-fold. First, participants have requested that they be afforded the opportunity to deposit as margin U.S. treasury bills in lieu of federal funds. In order to allow registered investment companies and other participants the opportunity to deposit as margin the actual underlying security which would be deliverable by the participant if an option written by the participant was exercised and assigned to the participant, Delta has determined it is willing to accept margin in such form. Second, in order for registered investment companies to become participants, the proposed rule change will permit them to provide margin in accordance with Rule 17f-2 under the Investment Company Act of 1940.[2] Third, the proposed rule change will permit empolyee benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA") to participate without Delta and its clearing bank potentially becoming "plan fiduciaries" under ERISA.[3]

In particular, the acceptance of treasury securities in lieu of federal funds on the basis proposed by Delta will afford employee benefit plan participants additional flexibility. The proposal will enable such participants to submit for processing at Delta over-the-counter treasury option trades that without approval of this proposal can not be submitted because of such participant's inability to deposit federal funds as margin with Delta and because Delta's procedures currently do not permit it to accept treasury bills or cover as margin.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to Delta since the proposed rule change will permit wider utilization of Delta's system by those participants who wish to hedge against changes in the treasury securities interest rates.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Delta has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period; (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

[1] 15 U.S.C. 78s(b)(1).

[2] Because assets deposited by an investments company with Delta as margin retain their identity as assets of the investment company, they must be maintained in a manner that complies with section 17(f) of the Investment Company Act of 1940 ("40 Act"). Under Rule 17f-2 of the 40 Act, a registered investment company must deposit its securities and other similar investments in a bank or other company whose functions and physical facilities are supervised by Federal or State authorities. These investments must be physically segregated from the assets of all other persons, and only those persons authorized by the investment company's board of directors and properly authorized bank personnel may have access to such investments. 17 CFR 270.17f-2 (1990).

Because it is unclear whether Delta's clearing bank would hold the margin deposited by an investment company in the name of Delta or in the name of the investment company and because the circumstances under which Delta would have access to such margin is unclear, an investment company may not deposit margin directly with Delta's clearing bank. *See* letter from Carol A. Peebles, Attorney, Office of Chief Counsel, Division of Investment Management, Commission, to Peter L. Curry, Gaston & Snow (dated July 21, 1989). Thus, Delta's proposal would permit investment companies to deposit margin with a custodian bank that holds such margin in a manner which complies with Rule 17f-2 of the 40 Act for the benefit of Delta pursuant to a custody agreement between Delta, the custodian bank, and the investment company.

[3] Under section 3(21)(A)(i) of ERISA, a person that exercises discretionary authority or control over the assets of an employee benefit plan is deemed to be a plan fiduciary. Thus, if Delta accepts Federal funds as margin from an employee benefit plan and invests such funds overnight, Delta may be deemed to be a plan fiduciary under ERISA. Because employee benefit plans that deposit treasury securities as margin with Delta will have no right to such securities (except for amounts which become available for withdrawal by reason of price movements favorable to the Plan) such securities will not be considered plan assets under ERISA. Accordingly, Delta will not be deemed to be a plan fiduciary under ERISA. *See* Department of Labor, Pension and Welfare Benefits Administration, Proposed Exemption for Certain Transactions Involving Delta Government Options Corporation, 55 FR 48932 (November 23, 1990), at note 7 and accompanying text.

U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-DGOC-91-01 and should be submitted within April 16, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7048 Filed 3-25-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28993; File No. SR-NASD-91-9]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Improvements in the NASD Code of Arbitration Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1991 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items has been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Part III, section 13(a), 39(a) and 41(e) of the NASD Code of Arbitration Procedure ("Code") to improve the efficiency of its arbitration process.

In general, the proposed rule change is intended to eliminate the required customer demand or written consent of the parties before application of simplified procedures, to require party service of amended pleadings, and to require that additional items be included in all arbitration awards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Simplified arbitration: The proposed rule change to section 13(a) of the Code eliminates the need for a customer to request ("customer demand") or for parties to consent in writing to simplified arbitration procedures. It has been the practice of all self-regulatory organizations ("SROs") to apply simplified procedures to cases involving public customers where the amount in dispute does not exceed $10,000, without customer demand or parties' written consent. The language of the section has been amended to conform to that practice.

Party service of amended pleading: The proposed rule change to section 39(a) of the Code requires parties to serve copies of amended pleadings on all other parties and to provide the Director with additional copies for each arbitrator. This change conforms to the provisions of section 25(b), which require party service of all pleadings subsequent to service of the statement of claim. The new language also conforms to current practice.

Contents of award: The proposed rule change to section 41(e) of the Code requires that the name of counsel, if any, and the type of security or product in controversy be included in all arbitration awards. The addition of these items would facilitate the exchange of information about arbitration proceedings and about the outcome of proceedings involving particular securities or products.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, in that the proposed rule change will facilitate the arbitration process in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD.

All submission should refer to the file number in the caption above and should be submitted by April 16, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7086 Filed 3-25-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Departmental Accounting and Financial Information System (DAFIS)

The Department of Transportation (DOT) herewith publishes a notice relating to the establishment of a new system of records for the Departmental Accounting and Financial Information System (DAFIS) maintained in connection with the accounting for and maintenance of financial information for the agencies within the Department of Transportation.

Any person or agency may submit written comments on the proposed establishment of the system of record to Eugene K. Taylor, Jr., Director, Office of DAFIS Development and Implementation (M-90), Office of the Secretary, 400 Seventh Street, SW, Washington, DC 20590. To be considered, comments must be received by April 8, 1991.

If no comments are received, the proposed changes will become effective on the above-mentioned date. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, March 8, 1991.

Melissa J. Allen,

Deputy Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation, Office of the Secretary

The Office of the Secretary of Transportation (OST), proposes to establish a new system of records to reflect the replacement of numerous existing agency accounting systems with a single Departmental Accounting and Financial Information System (DAFIS). This new system contains the official accounting records for agencies within DOT.

The purpose of this notice is to establish a new system of record for DAFIS. The Departmental system is being developed in response to the Office of Management and Budget (OMB) Circular A-127, *Financial Management Systems*, requirement to "establish and maintain a single, integrated financial management system, which may be supplemented by subsidiary systems." DAFIS provides for the accounting needs of each agency, but does not duplicate any existing systems. Each agency within DOT will cancel or amend its existing system of records as the agency implements DAFIS and the agency's system of record is either partially or entirely discontinued.

The authority to maintain this system of records is contained in 31 U.S.C. 3512(a), (b), which states that the head of each agency is responsible for establishing and maintaining adequate systems of accounting and internal control.

Most of the information in the system is provided voluntarily by individuals either through input into the Consolidated Uniform Payroll System (CUPS), which then feeds DAFIS, or directly into DAFIS for actions associated with government travel. The information will be used routinely by accounting office personnel as outlined in the attached system notice prepared for publication in the Federal Register. Use of this information will not unduly impact individual privacy rights.

Information in this system is processed in both hard copy and computerized environments. A description of the steps taken to safeguard these records is provided in the attached copy of the system notice.

The purpose of this report is to comply with the OMB Circular A-130, *Management of Federal Information Resources*, Appendix 1, dated December 12, 1985.

DOT/ALL-7

SYSTEM NAME:

Departmental Accounting and Financial Information System (DAFIS) DOT/OST.

SYSTEM LOCATION:

The system is located in Department of Transportation (DOT) accounting offices and selected program, policy, and budget offices. These offices are located within the Office of the Secretary (OST), the Research and Special Programs Administration (RSPA), the Federal Aviation Administration (FAA), the U.S. Coast Guard (USCG), the Federal Highway Administration (FHWA), the National Highway Traffic Safety Administration (NHTSA), the Urban Mass Transportation Administration (UMTA), the Maritime Administration (MARAD), and the Federal Railroad Administration (FRA). These offices exercise systems and operational control over applicable records within the system. The system software is centrally maintained by the Federal Aviation Administration's Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. Some centralized reporting functions are performed at Oklahoma City.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will cover: all civilian employees of the FAA, USCG, NHTSA, FHWA, OST, RSPA, FRA, UMTA, and MARAD; and, the military employees of USCG as their Operating Administrations are implemented on the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories include payment records for non-payroll related expenses, payment records for payroll made off-line, collection records for payroll offsets, and labor cost records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Accounting office personnel use these records to:

- Provide employees with off-line paychecks, travel advances, travel reimbursements, and other official reimbursements;
- Facilitate the distribution of labor charges for costing purposes;
- Track outstanding travel advances, receivables, and other non-payroll amounts paid to employees, etc; and,
- Clear advances that were made through the system in the form of off-line paychecks, payments for excess household goods made on behalf of the employee, garnishments, overdue travel advances, etc.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, magnetic disk, microforms, and in file folders. Storage of file folders and microforms is at the geographic location of the servicing accounting office. Magnetic tape and disk records are maintained at the central maintenance site in Oklahoma City.

RETRIEVABILITY:

Records are retrieved by employee social security number. Retrieval is accomplished by use of telecommunications.

SAFEGUARDS:

Access to magnetic tape and disk records is limited to authorized agency personnel through password security. Hardcopy files are accessbile to authorized personnel and are kept in locked file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Original payment vouchers and supporting documentation are retained on site at the accounting office for a period of three years. Certain transportation documents are forwarded to the General Service Administration for audit during that period. After three years, records are sent to GSA's Records Centers for storage. Records are destroyed after ten years and three months.

SYSTEM MANAGER(S) AND ADDRESS:

DAFIS Accounting Manager (M–91), Office of the Secretary, Office of DAFIS Development and Implementation, 400 Seventh Street SW., Washington, DC 20590.

DAFIS Functional Manager (AAC–22), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK 73125.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the manager of the accounting office supporting the employee's agency. Agency accounting managers will contact the DAFIS System Managers listed above if any centralized support is required for responses.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Information is provided by the employee directly or through the DOT Consolidated Uniform Payroll System.

[FR Doc. 91–6806 Filed 3–25–91; 8:45 am]

BILLING CODE 4910–62–M

Advisory Commission on Conferences in Ocean Shipping; Public Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of public meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its inaugural meeting. The public is invited to attend.

DATES: Meeting: 9:30 a.m., Wednesday, April 10, 1991, room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC.

ADDRESSES: Advisory Commission on Conferences in Ocean Shipping, Department of Transportation Headquarters Building, 400 Seventh Street SW., room 5102, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Florizelle B. Liser, Executive Director; telephone (202) 366–9781; FAX (202) 366–7870.

SUPPLEMENTARY INFORMATION: The Commission was established in the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations to the President and the Congress within one year of the Commission's establishment. At this inaugural meeting, the Commissioners will review what has happened in the ocean commerce transportaiton system since the 1984 Shipping Act, will discuss the scope of their investigation and begin to plan the Commission's operations. The Commission will be holding a number of hearings at various locations throughout the country, and a future notice will be issued indicating the dates of the hearings as well as other pertinent information. Those hearings will provide an opportunity for the public to address the Commission. Written comments may be submitted to the Commission at any time.

The Commissioners are:

Representing the President:

1. The Honorable Samuel K. Skinner, Secretary of Transportation, Chairman.
The Honorable Elaine L. Chao, Deputy Secretary of Transportation, Vice-Chairman.

Representing the Senate Committee on Commerce, Science, and Transportation:

2. The Honorable John B. Breaux.
3. The Honorable Bob Packwood.

Representing the Senate Committee on the Judiciary:

4. The Honorable Howard M. Metzenbaum.
5. The Honorable Strom Thurmond.

Representing the House of Representatives Committee on Merchant Marine and Fisheries:

6. The Honorable Walter B. Jones.
7. The Honorable Robert W. Davis.

Representing the House of Representatives Committee on the Judiciary:

8. The Honorable William J. Hughes.
9. The Honorable Tom Campbell.

Representing the private sector:

10. Paul L. Crouch, Vice President of Traffic, Calcot, Ltd., Bakersfield, CA.
11. Raymond P. deMember, Executive Vice President and General Counsel, International Association of Non-Vessel-Operating Common Carriers, Fairfax, VA.
12. Raymond Ebeling, Executive Vice President, Wallenius Lines, North America, Inc., Woodcliff Lake, New Jersey.
13. Conrad H. C. Everhard, Chairman, Cho Yang Line, USA, New York, New York.
14. James J. O'Brien, Port Director, Port Everglades Authority, Fort Lauderale, FL.
15. William P. Verdon, President, United Shipowners of America, Washington, DC.
16. Paul F. Wegener, Chairman of the Board, National Customs Brokers and Forwarders Association of America, New Orleans, LA.
17. Rober W. Wigen, Manager, Transportation Policy and Industry Affairs, Minnesota Mining and Manufacturing Company, Inc., St. Paul, MN.

Issued in Washington, DC on March 20, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91–7036 Filed 3–25–91; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ended March 15, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47450.
Date filed: March 11, 1991.
Parties: Members of the International Air Transport Association.
Subject: Comp Reso/P 0064 dated February 4, 1991, Composite Resolutions, R–1 To R–8. Comp Reso/P 0065 dated February 4, 1991, Composite Resolutions, R–9 To R–27. Comp Reso/P 0670 Dated February 18, 1991, Composite Resolutions, R–28 To R–29.
Proposed Effective Date: April 1/June 1/July 1, 1991.

Docket Number: 47453.
Date filed: March 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/055 dated February 15, 1991. Book Of Finally Adopted Resolutions R–1 To R–26.
Proposed Effective Date: October 1, 1991.

Docket Number: 47454.
Date filed: March 13, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 469 (TC2 Excursion fares between Barcelona, Madrid and Bata, Malabo).
Proposed Effective Date: April 1, 1991.

Docket Number: 47459.
Date filed: March 15, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated March 8, 1991. SNATC Mail Vote #89 (Albanian currency).

Proposed Effective Date: April 1, 1991.
Docket Number: 47461.
Date filed: March 15, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated March 8, 1991, R-1. Mail Vote 472 (Currency Revisions in Albania—Passenger). Telex dated March 8, 1991. Mail Vote 473 (Currency Revisions in Albania—Cargo).
Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-7038 Filed 3-25-91; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 15, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47455.
Date filed: March 13, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 10, 1991.
Description: Application of Japan Air Charter Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between points in Japan and points in the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-7039 Filed 3-25-91; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-91-13]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 15, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11)

Issued in Washington, DC, on March 19, 1991.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26398.
Petitioner: AMR Eagle, Inc.
Sections of the FAR Affected: 14 CFR part 135, subparts B, E, G, and H; and 14 CFR part 121, subparts V, N, and O and appendixes E, F, and G.
Description of Relief Sought: To allow wholly owned subsidiaries of the petitioner, who operate under part 135, to conduct training and qualification of pilots in accordance with part 121 regulations.

Docket No.: 26463.
Petitioner: Wilderness Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow pilots employed by petitioner, who have been trained by a certified mechanic, to remove and install aircraft seats in the C-206 and T-207 single-engine airplanes used by the petitioner.

Docket No.: 26495.
Petitioner: ERA Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner to use properly trained and certified pilots to remove and reinstall quick-release passenger seats on the Bell 212, 214ST, 222, and 412; MBB Model 105; and Aerospatiale Model 332 helicopters.

Docket No.: 26499.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 108.23(b).
Description of Relief Sought: To allow petitioner to accomplish pilot crewmember recurrent security training during one annual session. Since none of the petitioner's pilots have received annual security training since June 1990, compliance with § 108.23(b) during 1991 would generate a separate trip to recurrent ground school, in lieu of a single visit, for security training.

Dispositions of Petitions

Docket No.: 6572.
Petitioner: U.S. Department of Agriculture, Forest Service.
Sections of the FAR Affected: 14 CFR 65.127 (a) and (b) and 105.43(a).
Description of Relief Sought/Disposition: To amend and extend Exemption No. 392, as amended, to cover the emergency, as well as non-emergency use of parachutes; exempt the petitioner from approved parachute requirements, but not packing requirements; and exempt the petitioner from certain requirements for parachute packing equipment and facilities.

Petition Vacated, February 19, 1991

Docket No.: 24427.
Petitioner: United States Ultralight Association.
Sections of the FAR Affected: 14 CFR 103.1 (a), (e)(1), and (e)(4).
Description of Relief Sought/Disposition: To extend Exemption No. 4724, as amended, which permits individuals authorized by the petitioner to operate a two-place powered

ultralight vehicle of not more than 350 pounds empty weight for the purpose of flight instruction.

Grant, February 28, 1991, Exemption No. 4274C

Docket No.: 25617.
Petitioner: Japan Airlines Company, Ltd.
Sections of the FAR Affected: 14 CFR –45.11, 91.203(c), 91.417 (c) and (d), and part 43, appendix B, paragraphs (a) and (d).
Description of Relief Sought/ Disposition: To extend Exemption No. 5006, which allows petitioner to operate certain applicable aircraft without keeping an FAA Form 337 on board such aircraft that have been modified by installation of additional fuel tanks in the passenger or baggage compartments; and to allow petitioner to operate its U.S.-registered aircraft without having an aircraft identification plate secured to the exterior of the aircraft fuselage and, for aircraft manufactured before March 7, 1988, without having to display the aircraft model designation and builder's serial number on the aircraft exterior.

Grant, March 13, 1991, Exemption No. 5006A

Docket No.: 25636.
Petitioner: Swiss Air Transport Company, Ltd.
Sections of the FAR Affected: 14 CFR 45.11, 91.203(c), 91.417 (c) and (d), and part 43, appendix B, paragraphs (a) and (d).
Description of Relief Sought/ Disposition: To extend Exemption No. 5007, which allows petitioner to operate certain applicable aircraft without keeping an FAA Form 337 on board such aircraft that have been modified by installation of additional fuel tanks in the passenger or baggage compartments; and to allow petitioner to operate its U.S.-registered aircraft without having an aircraft identification plate secured to the exterior of the aircraft fuselage and, for aircraft manufactured before March 7, 1988, without having to display the aircraft model designation and builder's serial number on the aircraft exterior.

Grant, March 13, 1991, Exemption No. 5007A

Docket No.: 25653.
Petitioner: Singapore Airlines, Ltd.
Sections of the FAR Affected: 14 CFR 45.11, 91.203(c), 91.417 (c) and (d), and part 43, appendix B, paragraphs (a) and (d).
Description of Relief Sought/ Disposition: To extend Exemption No. 5008, which allows petitioner to operate certain applicable aircraft without keeping an FAA Form 337 on board such aircraft that have been modified by installation of additional fuel tanks in the passenger or baggage compartments; and to allow petitioner to operate its U.S.-registered aircraft without having an aircraft identification plate secured to the exterior of the aircraft fuselage and, for aircraft manufactured before March 7, 1988, without having to display the aircraft model designation and builder's serial number on the aircraft exterior.

Grant, March 13, 1991, Exemption No. 5008A

[FR Doc. 91–7084 Filed 3–25–91; 8:45 am]
BILLING CODE 4910-13-M

Operation SNAPSHOT National Safety Inspection Program of FAA Production Approval Holders and their Suppliers; Final Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Operation SNAPSHOT Final Report. The final report contains the findings and recommendations of the eighty-eight Operation SNAPSHOT Inspections.

ADDRESSES: Copies of the Operation SNAPSHOT Final Report can be obtained in writing from the Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8361.

FOR FURTHER INFORMATION CONTACT: Andrew Lown, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8361.

Issued in Washington, DC, on March 12, 1991.

Jerald E. Strentz,
Acting Assistant Manager, Aircraft Manufacturing Division.

[FR Doc. 91–7074 Filed 3–25–91; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, telephone (518) 472–3616,

or

J. Robert Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12252, telephone (518) 457–6452.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to replace the Stutson Street Bridge over the Genesee River in Monroe County, New York. The proposal includes the Stutson Street bridge over the Genesee River and the Conrail Railroad, and an appropriate length of bridge approaches. The suggested termini for the proposal are the proposal are defined as the interchange of Lake Ontario State Parkway (LOSP) and Latta Road on the west and Lake Shore Boulevard, 1000 feet east of Saint Paul Boulevard on the east.

Alternatives under consideration include: (1) Taking no action; (2) rehabilitation; (3) replacement on existing alignment; (4) replacement on new alignment. Variations of bridge width, clearances over the Genesee River and various approach termini will be studied.

Two scoping meetings were held. The first scoping meeting was held at West Irondequoit Central School's Iroquois Elementary School, 150 Colebrook Drive, Rochester, New York, 14617, on April 4, 1990 at 7 p.m. for the general public. The second was held at the New York State Department of Transportation Regional Office, 1530 Jefferson Road, Rochester, New York, 14623, room 303, on April 11, 1990 at 1

p.m. for advisory and regulatory agencies.

The draft EIS will be available for public and agency review and comment. A public hearing will also be held. Public notice will be given for the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comment or questions concerning this proposed action and EIS should be directed to NYSDOT or FHWA at the addresses provided above.

Issued on: March 18, 1991.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 91-7033 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Publication of an Existing System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of an Existing System of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Departmental Offices gives notice of an existing system of records entitled the Office Tracking System (OTS)—Treasury/DO .206. The OTS has been established to: (1) Monitor correspondence presented to or generated by an office; (2) maintain a current record and status of correspondence presented to or generated by an office; and (3) provide reports of the correspondence activities within an office.

DATES: Comments must be received no later than April 25, 1991.

ADDRESSES: Comments should be sent to the Automated Systems Development Branch, Automated Systems Division, Departmental Offices, Room 5469, 15th and Pennsylvania Avenue NW., Washington, DC 20220, Attention: Chief, Automated Systems Development Branch.

FOR FURTHER INFORMATION CONTACT: Joan Arnold, Branch Chief, Automated Systems Development Branch, (202) 566-7686, Departmental Offices, Automated Systems Division, Room 5457, 15th & Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The OTS has been established to provide Departmental Offices staff with the capability to track correspondence received or generated within an office. There are twenty-six offices within Departmental Offices with discrete versions of OTS where correspondence control records are maintained electronically.

Treasury/DO .206

SYSTEM NAME:

Office Tracking System (OTS)—Treasury/DO.

SYSTEM LOCATION:

Office of Administration, Automated Systems Division, 15th & Pennsylvania Avenue, NW., Washington, DC 20220

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each piece of correspondence will have a record generated in OTS containing the name of the addresser, addresse, initials of the approving individual and the name of the individual assigned to respond or take action. This correspondence consists of letters to or from the public, Congress or other agencies, and internal memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The primary purpose of the system is to provide a facility to track the status of incoming and internally generated correspondence within an office. It provides management information related to action(s) required and the responsible individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside Departmental Offices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media.

RETRIEVABILITY:

The records may be retrieved by name of writer, name of addressee, or subject of document.

SAFEGUARDS:

Access is limited by a computer sign-on procedure which includes access identification and a password protection as well as individual file protection features.

RETENTION AND DISPOSAL:

The records are retained at the discretion of the OTS user who may electronically delete or file the records. All records are saved to a backup magnetic media at least once a month. These media are retained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Automated Systems Development Branch, Automated Systems Division, room 5457, 15th & Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURES:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Assistant Director, Disclosure Services, Departmental Offices, 15th & Pennsylvania Avenue NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Inquiries should be addressed to the Assistant Director, Disclosure Services, Departmental Offices, 15th & Pennsylvania Avenue NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See notification procedures above.

RECORD SOURCE CATEGORIES:

The source of data in OTS is letters or memoranda from Treasury officials, other agencies, members of Congress, the public, or the press.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: March 19, 1991.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 91-7073 Filed 3-25-91; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

Arcanum Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Arcanum Federal Savings Association, Arcanum, Ohio, on March 15, 1991.

Dated: March 21, 1991.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–7088 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Bell Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Bell Federal Savings Bank, Upper Darby, Pennsylvania, on March 19, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–7089 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Bell Savings Bank, PaSA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Bell Savings Bank, PaSA, Upper Darby, Pennsylvania (OTS No. 2371), on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–7090 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Home Federal Savings Association of Kansas City; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings Association of Kansas City, Kansas City, Missouri, on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–7091 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Sovereign Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sovereign Savings Bank, FSB, Palm Harbor, Florida, on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7092 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Security Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision as duly replaced the Resolution Trust Corporation as Conservator for Security Savings and Loan Association, Scottsdale, Arizona ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7093 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

AmeriFirst Bank, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for AmeriFirst Bank, A Federal Savings Bank, Miami, Florida, on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7094 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Arcanum Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Arcanum Federal Savings and Loan Association, Arcanum, Ohio, OTS Number 3939, on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7095 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Bell Savings Bank, PaSA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Bell Savings Bank, PaSA, Upper Darby, Pennsylvania (OTS No. 2371), on March 19, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7096 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Home Savings Association of Kansas City, F.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Savings Association of Kansas City, F.A., Kansas City, Missouri OTS No. 2882, on March 15, 1991.

Dated: March 21, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 91–7097 Filed 3–25–91; 8:45 am]
BILLING CODE 6720–01–M

Sovereign Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for

Sovereign Savings Bank, Palm Harbor, Florida, OTS No. 8365, on March 15, 1991.

Dated: March 21, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-7098 Filed 3-25-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 58
Tuesday, March 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 5, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–7215 Filed 3–22–91; 12:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 12, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–7216 Filed 3–22–91; 12:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 19, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–7217 Filed 3–22–91; 12:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 26, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–7218 Filed 3–22–91; 12:40 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, March 28, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: March 21, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–7228 Filed 3–22–91; 12:41 pm]

BILLING CODE 6355–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 1:30 p.m. April 4, 1991 until completed. May be continued April 5, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Closed. Exemption 2 relating to internal personnel rules and practices of the Board. Portions of the meeting may also be closable under Exemptions 6.

MATTERS TO BE CONSIDERED:

1. Deliberation regarding implementation of excepted appointment authority and conversion of existing technical personnel to excepted system.

2. Deliberation regarding Board and staff practices for the internal handling of documents.

3. Deliberation regarding recruitment strategies for technical personnel.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, General Counsel, (202) 208–6387.

Dated: March 22, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–7203 Filed 3–22–91; 11:32 am]

BILLING CODE 6820–KD–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 5:30 p.m. April 24, 1991.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue, SW., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Briefing by the Department of Energy and its contractors and outside experts on Primary Heavy Water Tank Integrity at Savannah River Site, South Carolina.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208–6400.

Dated: March 21, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–7204 Filed 3–22–91; 11:32 am]

BILLING CODE 6820–KD–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 1, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–7262 Filed 3–22–91; 3:00 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, March 26, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: There has been a change in the agenda listed in the notice served March 19, 1991 and published in the **Federal Register** on March 19, 1991 at 56 FR 11587. Section 5a No. 106, Household Goods Freight Forwarder Bureau has been removed from the agenda. All other matters will remain on the agenda.

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–7235 Filed 3–22–91; 12:41 pm]

BILLING CODE 7035–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 25, 1991.

A closed meeting will be held on Tuesday, March 26, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 26, 1991, at 2:30 p.m. will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: March 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–7219 Filed 3–22–91; 12:41 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 58
Tuesday, March 26, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV-91-237FR]

Expenses and Assessment Rate for Marketing Order Covering Peaches in Georgia

Correction

In rule document 91-5039 beginning on page 8905 in the issue of Monday, March 4, 1991, in the first column on that page, the CFR title in the heading should have appeared as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 91-006]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

Correction

In notice document 91-3601 beginning on page 5970 in the issue of Thursday, February 14, 1991, make the following correction:

On page 5971, in the table, in the 1st column, the 11th entry should read "90-365-02 Renewal of Permit #90-088-01 issued 7-11-90".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

RIN 0701-AA28

Release, Dissemination, and Sale of Visual Information Materials

Correction

In rule document 91-565 beginning on page 953 in the issue of Thursday, January 10, 1991, and corrected on page 10945 in the issue of Thursday, March 14, 1991, make the following correction to the March 14 correction document:

§ 811.8 [Corrected]

On page 10945, in the third column, in amendatory instruction "d.", in the first and third lines, "limit" should have read "unit".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-260-000, et al.]

Southwestern Electric Power Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 91-4679 beginning on page 8343 in the issue of Thursday, February 28, 1991, make the following correction:

On page 8344, in the first column, in the fifth line from the bottom of the page, the Docket number should read "ER 91-257-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER 91-241-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 91-3519 beginning on page 5996 in the issue of Thursday, February 14, 1991, make the following correction:

On page 5998, in the first column, under number **7.**, the Docket number should read "ER 91-233-000".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3903-3]

State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clear Water Act

Correction

In notice document 91-4755 beginning on page 8348 in the issue of Thursday, February 28, 1991, make the following correction:

On page 8349, in the table, in the third column, in the entry for Washington, "0.17604" should read "0.017604".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1991-2]

Honoraria; Contribution and Expenditure Limitations and Prohibitions

Correction

In rule document 91-5250 beginning on page 9275 in the issue of Wednesday, March 6, 1991, make the following correction:

§ 110.12 [Corrected]

On page 9276, in the second column, in § 110.12(a), in the third line, "hororarium" should read "honorarium".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4214-11; Nev-016774]

Proposed Modification of Withdrawal; Nevada

Correction

In notice document 91-2656 beginning on page 4644 in the issue of Tuesday,

February 5, 1991, make the following correction:

On page 4644, in the third column, in the land description, under *Berry Creek* ***, in Sec. 4 "W¼" should read "SW¼".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans, Interest Rates

Correction

In rule document 91-6324 beginning on page 11354 in the issue of Monday, March 18, 1991, make the following correction:

On page 11354, in the first column, in the **SUMMARY**, in the third line, "450,000" should read "$50,000".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 23

[Docket No. 25811; Amdt. Nos. 1-37 and 23-42]

RIN 2120-AC15

Small Airplane Airworthiness Review Program Amendment No. 2

Correction

In rule document 91-23 beginning on page 344, in the issue of Thursday, January 3, 1991 make the following corrections:

1. On page 346, in the second column, in the second complete paragraph, in the eighth line, "claim" should read "climb".

2. On page 349, in the second column, in the second line, "§ 23.969(b)" should read "§ 23.939(b)".

3. On the same page, in the same column, under *Proposal 29.*, in the eighth line, "23-24." should read "23-34.".

§ 23.221 [Corrected]

4. On page 352, in § 23.221(a)(1)(i), in the first line, "the" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-38-90]

RIN 1545-AO82

Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund

Correction

In proposed rule document 91-4805 beginning on page 8959, in the issue of Monday, March 4, 1991, make the following correction:

§ 1.6694-1 [Corrected]

On page 8962, in the first column, in § 1.6694-1(a), in the eighth line, "13" should be removed.

BILLING CODE 1505-01-D

federal register

Tuesday
March 26, 1991

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 255

Computer Reservation System (CRS) Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494; Notice No. 91-6]

RIN 2105-AB47

Computer Reservation System (CRS) Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department is proposing to adopt rules governing computer reservations systems (CRS). The Department initiated this rulemaking because its existing CRS rules (14 CFR part 255) would have expired on December 31, 1990, unless extended by the Department (the Department later changed that expiration date to November 30, 1991). It is the Department's preliminary position that the rules should be continued with revisions. The Department is proposing revisions because stronger rules appear necessary to enhance competition in the airline and CRS industries. These proposed rules should enhance competition by eliminating various CRS vendor practices that seem to unnecessarily restrain competition.

DATES: Comments must be submitted on or before June 24, 1991. Reply comments must be submitted on or before August 8, 1991.

ADDRESSES: Comments must be filed in Room 4107, Docket 46494, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of the comments, each commentor should file twelve copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4731 or 366-9307, respectively.

SUPPLEMENTARY INFORMATION:

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Introduction

The Department's rules governing computer reservations systems (CRSs) operated in the United States, 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the Board) in 1984, and by their terms would have expired on December 31, 1990, unless renewed, § 255.10(b). (When the Board ceased to exist on December 31, 1984, most of its remaining functions, including responsibility for the rules, transferred to the Department of Transportation.) In this proceeding we are considering whether to readopt those rules and, if so, whether to modify them. To begin this proceeding, we issued an Advance Notice of Proposed Rulemaking requesting comments on these issues. Advance Notice of Proposed Rulemaking, Computer Reservations Systems, 54 FR 38870 (September 21, 1989). We have amended the rules to maintain the current rules for an additional eleven months to give us time to complete this proceeding. 55 FR 53149 (December 27, 1990).

We have received comments and other pleadings from the Department of Justice, each of the U.S. carriers controlling a system (American, United, Northwest, TWA, Delta, and the Texas Air companies), one of the systems (Covia), seven other U.S. carriers (USAir, Alaska, America West, Midway, Midwest Express, Pan American, and Southwest), the two major travel agency trade associations (American Society of Travel Agents and Association of Retail Travel Agents), four travel agencies,[1] nine foreign airlines and aviation groups (Aer Lingus, Air France, British Airways, Iberia Airlines, LTU International, Nigeria Airways, Orient Airlines Association, Scandinavian Airline System, and Varig), two foreign governmental groups (the European Civil Aviation Conference and the European Community), an independent manufacturer of CRS hardware (Megadata), and two rental car companies (Avis and Hertz). We will grant the various requests for leave to file reply comments, supplemental comments, and comments out of time.

In general, the two largest vendors, American Airlines and United Air Lines, and Covia, the CRS managed by United, oppose any significant strengthening of the rules and suggest that no CRS rules are necessary, although these commentors would not oppose renewal of the existing rules (this notice sometimes refers to these three commentors as the major vendors). Travel Trust and Garber Travel argue that we should not adopt any rules, while Maritz Travel contends that we should allow the CRS business to remain unregulated. Avis and Hertz contend that the rules should be expanded to cover the display of rental car services. The other U.S. and foreign airline parties, the Justice Department, the European Community, ECAC, the two travel agency trade associations, and Hewins Travel argue that CRS rules are essential for preserving airline competition and that the current rules must be strengthened significantly to protect airline competition from the anti-competitive practices of the CRS vendors.

We stated in the ANPRM that we had tentatively decided to renew the rules and that at least the rules governing subscriber contracts required strengthening, 54 FR at 38873. We have concluded after reviewing the comments and other relevant material that other changes should be considered to limit the vendors' ability to use their market power to reduce airline competition. In at least some areas where we are asking parties to comment on additional rules, however, we are not sure that the benefits of rules would outweigh their burdens or that rules would be

[1] The travel agencies are Travel Trust International, which states that it is a worldwide consortium with 113 members, including 53 in the United States, and that its U.S. members' average annual sales are $40 million; Hewins Travel Consultants, one of the largest agencies in Maine; Maritz Travel Co., an agency in St. Louis County Missouri; and Garber Travel, a large agency in Brookline, Massachusetts.

practicable. We wish to limit our intervention to areas where regulations would reduce or eliminate significant potential anticompetitive or deceptive practices. We will not try to redress every grievance of participating carriers and travel agencies. For this reason, we are not requesting further comment on a number of rule proposals presented in the parties' comments. Moreover, our discussion should not be read as an indication that we are committed to adopting rules in all areas discussed in this notice.

We are proposing a set of revised rules in this Notice of Proposed Rulemaking. Comments on the proposed revised rules will be due 90 days after publication of this notice and reply comments will be due 45 days thereafter. We have established relatively long comment periods because of the complexity of the issues and our desire to obtain a more detailed analysis on many of the issues raised in the comments. After considering the comments, we will issue a final rule.

In preparing these proposed rules we have relied primarily on the comments filed in response to the ANPRM; our experience in airline and CRS matters; two reports on the CRS business written by our staff, the May 1988 "Study of Airline Computer Reservation Systems" and the February 1990 study, "Airline Marketing Practices: Travel Agencies Frequent-Flyer Programs and Computer Reservation Systems," prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry; and various documents and reports submitted by various carriers and vendors for those reports (the reports are cited hereinafter as the 1988 CRS Study and the Marketing Report). We are also relying upon the Board's findings and analysis in its CRS rulemaking set forth in Regulation ER-1385, 49 FR 32540 (August 15, 1984), and the Notice of Proposed Rulemaking, EDR-466C, 49 FR 11644 (March 27, 1984) (these documents are cited as the "Final Rule" and the "NPRM").

I. Background

A. The CRS Business and Its Importance

CRSs have become essential for virtually every airline's marketing of its services—all airlines rely on travel agents for selling the great majority of their tickets, and almost all travel agents rely on CRSs to learn what services are available, to choose flights, and to book seats. Airline-owned CRSs present competitive problems because the airlines' dependence on agents and the agents' dependence on CRSs give the airlines controlling the systems substantial market power and thus the ability to distort airline competition. In addition, only a small proportion of agencies use more than one system, and even those agencies usually use one system for the great majority of their airline bookings. Thus, each system generally is its subscribers' only source of information on what airline services and fares are available when a client wishes to make travel arrangements. Each CRS therefore has some degree of monopoly power on providing information on airline services to the agencies that use the CRS as either their only or their primary system.

A CRS consists of a periodically-updated central database that is accessed by subscribers (primarily travel agents) through computer terminals. Subscribers use CRSs to determine what airline flights are operated in a given market, what fares are offered, and whether seats are available, to make bookings, and to issue tickets. CRSs also provide information and booking capabilities on other travel services, especially hotels and rental cars. If a travel agent did not use a CRS, the agent would have to rely on printed sources for schedule information and call the airlines to learn what fares and seats were available and to make a booking, a much more burdensome procedure. Similarly, alternative methods of issuing tickets and storing and retrieving information on customer transactions would be much more time-consuming and expensive. Travel agencies thus rely on CRSs to increase their efficiency and improve their service. In 1987 95 percent of all U.S. agencies had CRSs, and they used the systems to book 92 percent of their domestic airline sales and 77 percent of their international airline sales and to issue 94 percent of their airline tickets. Marketing Report at 21.

Until February 1990 there were five CRSs provided in the United States, all owned and operated by one or more airlines: Sabre, Apollo, System One, PARS, and DATAS II. AMR Corporation, the parent of American Airlines, owns Sabre. The Covia Partnership owns Apollo, whose daily operations are managed by a United subsidiary; United owns half of Covia's partnership interests, while the other partners are USAir, British Airways, KLM, Swissair, Alitalia, and Air Canada. Continental Airlines Holdings, the parent of Continental Airlines and Eastern Air Lines, owns System One; Continental Airlines Holdings had planned to sell half of its interest to EDS, a data processing firm, but the parties recently cancelled their agreement (Continental Airlines Holdings was formerly called Texas Air Corporation and will be referred to as "Texas Air" in this notice to avoid confusion with Continental Airlines). PARS was a joint venture between Northwest and TWA, while Delta owned DATAS II. In February 1990, Delta, Northwest, and TWA merged their CRSs into a new joint venture, Worldspan. More recently, Abacus (a partnership consisting of several Asian airlines including Singapore Airlines, Philippine Airlines, China Airlines, Royal Brunei Airlines, Cathay Pacific Airlines, and Malaysian Airlines) became a partner in Worldspan. Delta has a 38 percent ownership share in Worldspan, Northwest a 32 percent share, TWA a 25 percent share, and Abacus a 5 percent share.

The five systems held the following market shares, based on segments booked through each system, in calendar year 1988: Sabre, 43 percent; Apollo, 28 percent; System One, 14 percent; PARS, 9 percent; and DATAS II, 6 percent. Marketing Report at 51.

The vendors of CRS services obtain compensation from the booking fees charged airlines and other suppliers of travel services when their services are booked through the system and from the charges paid by subscribers for using the system (usually monthly lease payments). Moreover, a vendor generally obtains additional airline revenues when a subscriber uses its CRS that it would not have received had the agency been unautomated or used another CRS (the extra revenues are called incremental revenues). Incremental revenues result because travel agencies tend to make a disproportionate number of bookings on the airline whose CRS they use.

As indicated, CRSs have become essential for marketing airline services due to the travel agencies' reliance on CRSs and the airlines' reliance on travel agencies for marketing air transportation. Travel agencies are generally accredited to represent almost all airlines in the sale of air transportation, and they hold themselves out to the public as neutral sources of travel advice. *See, e.g.*, NPRM at 7, 9, 23; ASTA Comments at 38. The agencies' status as impartial representatives of almost all airlines makes the airlines' distribution system different from that of most other industries, where distributors neither act nor are expected to act as neutral representatives of the providers of services and goods.

The airlines have come to rely largely on agents for the sale of airline

transportation, because the agency system is the most efficient means of distributing tickets; any airline that attempted to create its own distribution system would incur much greater expenses. NPRM at 22. In addition, travellers have increasingly relied on agencies as a source of information since the beginning of airline deregulation. Marketing Report at 12–14. As a result, travel agencies issue almost 80 percent of all airline tickets and make about 70 percent of all airline bookings in the United States. Marketing Report at 7.

The agencies' importance, and their reliance on CRSs, mean that for almost all airlines their ability to sell their services through CRSs has become essential for the successful marketing of their air transportation. Moreover, the high profit margins received on marginal passengers means that an airline's ability to operate profitably often depends on its ability to add a few more passengers on each of its flights. As a result, each domestic airline must have its services displayed and saleable through each system in order to reach the agencies using that system (the only exception is Southwest, but its ability to survive without full CRS participation seems to stem from several special factors not characteristic of other airlines).

By the same token, the dynamic competition sought through the deregulation of the airline industry depends on the ability of consumers to obtain the optimal level of knowledge on the services and fares offered by all competitors. That ability depends largely on the completeness and accuracy of the information provided by CRSs to travel agents.

B. The Board's Rules

Because of the impact of CRS practices on airline competition, the Board determined that rules were necessary to prevent vendors from abusing their control of the systems. The Board chose in its rulemaking to adopt limited rules prohibiting only those practices which were clearly unfair or anticompetitive. The Board limited the scope of its rules primarily because of its concern that the dynamic nature of the computer and airline industries made it difficult to predict future developments. NPRM at 31.

The Board made its rules applicable to CRSs, defined as systems that display schedule, fare, and availability information, make bookings, and issue tickets, to the extent the CRSs are owned or operated by airlines and used by ticket agents that hold themselves out as neutral sources of information on airline services.

The rules require vendors to present "unbiased" primary displays for which the selection, editing and display of flights and fares must be based on objective criteria (*i.e.*, criteria not related to carrier identity). 14 CFR 255.4. Under the rules, participation in any level of CRS service offered by the vendor must be made available to all airlines on nondiscriminatory terms. Booking fees thus may not be discriminatory. 14 CFR 255.5, 255.7, and 255.8. The Board adopted these requirements to prevent vendors from using their control of the systems to target their competitors.

Each vendor also must supply, on nondiscriminatory terms, domestic participating carriers with any domestic marketing and booking data that it elects to generate for its own use. 14 CFR 255.8.

In an effort to eliminate contract restrictions impeding subscribers from using multiple systems and switching between systems, the Board adopted rules setting the maximum contract length at five years, prohibiting the tying of commissions to a subscriber's use of a system, prohibiting vendor airlines from requiring subscribers to use their system to issue their tickets and from varying the price charged to the subscriber based on the identity of the airline whose services are sold, and prohibiting direct or indirect vendor restrictions on the acquisition or use of other systems by subscribers. NPRM at 34–35; 14 CFR 255.6.

The Board's rules were affirmed on review, *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985), in an opinion written by Judge Posner.

C. Developments Since the Board's Rulemaking

Because of the importance of CRSs, we and other government agencies have conducted several studies of their competitive effects in the airline industry. The Board's rulemaking relied on an earlier Board study and upon an extensive body of evidence gathered in conjunction with the rulemaking. *See* Order 83–8–105 (August 26, 1983). The Board also relied on evidence submitted by the Department of Justice from its earlier investigation into CRS practices. *See, e.g.*, Final Rule at 7.

After the Board's rules took effect, the Department of Justice issued a preliminary report on the results of the rules, which concluded that the vendors still had market power but that the rules had at least prevented them from exercising that power through display bias. The General Accounting Office issued a preliminary analysis of the systems' profitability. *See* 1988 CRS Study at 16–19. The GAO's later analyses of the competitive effects of CRSs have caused it to conclude that CRSs have anticompetitive effects. *See* United States General Accounting Office, "Airline Competition: Industry Operating and Marketing Practices Limit Market Entry" at 63–64, 125 (August 1990).

The Department of Justice has investigated CRS issues recently in connection with its analyses of two proposed CRS mergers, the abandoned Sabre-Datas II merger and the completed merger of PARS and Datas II. The Justice Department comments in this proceeding are based on those investigations. Justice Dept. Comments at 8.

Our staff has also conducted two major investigations into CRS issues. The staff's 1988 CRS Study concluded, among other things, that the booking fees charged by the three largest systems appeared to be well above the costs of providing the booking services, that the systems generated substantial incremental revenues for their airline owners, and that the major systems had been extremely profitable. The staff based its conclusions on the voluminous data and documents collected for the study, which took more than one year to complete. Furthermore, as part of the Secretary's study of airline competition, our staff published the Marketing Report analyzing the competitive impact of CRSs and other airline marketing practices, which was based on documents filed by the vendors and major carriers and on interviews with officials of most major airlines, ASTA and ARTA, and several travel agencies.

In addition, the increasing importance of CRSs in marketing airline services throughout the world has caused other countries to adopt CRS regulations. The European Community has adopted CRS rules, ECAC has established CRS guidelines for its 22 member states, and Canada has imposed regulations on its dominant CRS vendor through a consent decree and begun drafting CRS rules applicable to all vendors in Canada. The International Civil Aviation Organization has also been considering model CRS regulations for application throughout the world.

II. Summary of Proposal

Before explaining in detail the basis for our proposal, we wish to summarize why we believe CRS rules remain necessary, and why we wish to consider modifications to the current rules. In general, our analysis of competition in

the airline and CRS industries matches the analyses made by the Board in its rulemaking and by the Justice Department in its comments, and the additional rules we are proposing respond to competitive concerns raised by the Justice Department, although our proposed rules differ to some extent from that Department's proposals.

In its comments, the Justice Department explains why the vendors' CRS practices reduce airline competition and as a result cause travellers to pay higher fares than they would in a more competitive market, Justice Dept. Comments at 1–2:

> [Each CRS] has market power over airlines, which are dependent on the CRSs for the distribution of their tickets. The CRS vendors are able to use their market power to charge airlines supracompetitive booking fees. These booking fees, in turn, are passed on to consumers in higher air fares. The CRS vendors also use their market power to bias their systems in favor of their own airlines' flights. Both practices may impede entry and expansion by competing airlines in air transportation markets. In addition, the CRS vendors may be engaging in contracting practices that impede entry and expansion by competing CRS vendors into CRS markets where the contracting vendor is dominant. Since effective entry into airline markets dominated by a CRS vendor may be dependent upon simultaneous entry or expansion in CRS markets, these contracting practices also may impede entry and expansion in airline markets.
>
> Many airline markets have a small number of actual competitors; the threat of entry and expansion by competing carriers can be critical in ensuring the competitive functioning of those markets. Thus, the ability of CRS vendors to deter entry and expansion by competing airlines may result in higher fares or poorer quality service in those markets.

A. The Need for CRS Rules

The four airline-owned CRSs have the ability to prejudice airline competition because they control the sources of information on airline services used by the airlines' main distribution network, the travel agency system. Travel agents use CRSs almost exclusively to determine what airline services are available, to book reservations, and to issue tickets.

Travel agency offices, with few exceptions, use only one system or use one system predominantly. When a traveller asks an agent for an airline booking, the only information the agent is likely to see on the available air travel options will be the information provided by the CRS used by his or her agency. Vendors thus control the flow of information between the airlines and their primary distribution channel, travel agencies.

As a result, if an airline wants an agency to know of its services and be able to sell them, it usually must participate in the CRS primarily used by the agency. The CRSs accordingly do not compete for airline participants, for each airline must participate in all of the systems. This lack of competition for airline participants enables the vendors to charge booking fees well above their costs. While vendors do compete for subscribers, that competition does not offset the lack of competition on the airline side of the CRS business.

Moreover, the CRS industry now is highly concentrated, since there are only four firms, the largest firm (Sabre) has a 40 percent share of the national market, and each of the vendors has a dominant market share in some regional markets. No de novo entry is likely into the business, since the costs of entry would be great, since airline vendors have substantial competitive advantages over non-airline vendors, and since most travel agencies are limited by contracts that discourage them from switching to a new system or adding a new system.

Since the owners of the CRSs compete with other airlines in the airline business, they have the incentive to use their market power to prejudice the competitive ability of other airlines. History has shown that they will use that power. The vendors' past abuses caused the Board to adopt its CRS rules.

Before the Board adopted the CRS rules, for example, each vendor biased its displays of airline services to improve the display position of its own flights and to worsen (and sometimes eliminate) the display of its competitors' flights. This shifted traffic away from their competitors to the vendors, thereby reducing or eliminating the profitability of competing flights operated by non-vendors. The bias thus handicapped airlines in competing on the basis of service and fares, for consumers and their agents often would not learn which airline provided the best service for them.

The vendors also charged discriminatory booking fees that were unrelated to costs. The carriers charged the highest fees tended to be new entrants like Midway that also suffered the most from display bias. These fees raised the costs of such carriers and reduced their ability to offer lower fares than the incumbent carriers. In addition, the fear of losing access to a major system caused some carriers to promise a vendor that they would not compete aggressively against it as a condition to maintaining their participation in its system.

Vendors additionally controlled the marketing information produced by CRS bookings and used the data to benefit their own sales efforts.

The major vendors used restrictive contracts to keep travel agencies from switching to one of the smaller systems or from using more than one system. These contract provisions made entry into the CRS business difficult and frustrated the expansion efforts of the smaller systems.

B. The Impact of the Board's Rules

The Board found it necessary to adopt rules to prevent the major competitive abuses of the vendors. The Board's rules—the rules now in effect—prohibit display bias, require that booking fees and other terms for airline participation be nondiscriminatory, require that other carriers have access to the marketing data generated from CRS bookings, and prohibit some of the more restrictive subscriber contract provisions.

The Board chose to adopt only minimal restrictions that addressed the major competitive problems and did not attempt to eliminate the CRS industry's structural problems.

Since the rules took effect in 1984, the CRS industry's competitive structure has worsened in one respect: two of the airline-owned systems have merged and the one independent firm failed. On the other hand, there have been some promising developments. The broadened ownership of most systems has reduced — but not eliminated—the incentives to use CRSs to prejudice airline competitors of the vendors. The developments in CRS technology have improved the systems' ability to offer reliable and timely information on the services and fares offered by non-vendor airlines, thereby undercutting some of the vendors' advantages over their competitors. In addition, vendors now offer subscribers personal computers (PCs) for use as CRS terminals; the PCs could enable subscribers to use third-party hardware and software that would allow agencies to rearrange the data provided by the vendors. If agencies could take full advantage of their PCs, that would reduce each vendor's control over the information received by its subscribers.

The rules have eliminated the worst problems, such as display bias and discriminatory booking fees, and made it easier for the smaller systems to expand their subscriber bases. The rules, however, have neither eliminated the industry's structural problems nor prevented vendors from obtaining important competitive advantages from their control of the systems in ways that may be abuses of their market power. First, the vendors obtain substantial

incremental revenues from the systems, which result in large part from architectural bias, the system features that make it easier and more reliable for an agent to book a traveller on the vendor than on another carrier. Although the vendors could eliminate architectural bias if they chose, they have not done so. They have improved the timeliness and reliability of information and transactions for participating carriers, but have not eliminated the vendors' advantages.

Secondly, the vendors obtain large profits from the booking fees charged carriers for participation in the systems, fees that are well above the costs of the transactions for the two largest systems. Vendors can charge other carriers high fees because, as shown, virtually no airline can afford to have a system omit its services. Moreover, travel agencies decide which CRS they will use, and the agencies have no incentive to select a CRS with a lower booking fee.

Thirdly, although the Board intended its rules on subscriber contracts to provide agencies more freedom to switch or add systems, the vendors have adopted contract practices that have limited the ability of vendors to convert the subscribers of other vendors. Among other things, vendors routinely require a new five-year contract whenever a subscriber obtains any additional CRS equipment. Nonetheless, the vendors do compete to some extent for subscribers, with the result that vendors have improved their CRS services and offer many agencies CRS services at well below cost.

The systems produce substantial gains for the vendors. While we have not calculated the current profitability of the systems, our CRS studies concluded that in 1985 and 1986 Apollo and Sabre achieved returns on invested capital of 50 to 55 percent and 75 to 90 percent, respectively; that the booking fees charged other airlines by Apollo and Sabre were approximately double the actual cost of providing the booking service; and that 20 to 30 percent of American's bookings at Sabre agencies and United's bookings at Apollo agencies represented incremental revenues. 1988 CRS Report at 85–88, 111–112; Marketing Report at 63–64. If parties consider that these calculations require modification or supplementation, we invite them to explain why in their comments.

Airline competition may have suffered as a result. The incremental revenues obtained by the vendors make it difficult for a carrier to compete with a vendor on an airline route when the vendor has a large share of the CRS market at one or both endpoints, since the vendor will gain significantly more traffic at the agencies using its system and thus will be able to operate more efficiently on the route than any non-vendor carrier. Similarly, the non-vendor must pay supracompetitive booking fees that will increase its costs and thus its fares. Since airlines normally operate on a low profit margin, these fees (and the revenue diversions) can spell the difference between profit and loss on many airline routes.

Furthermore, even a vendor airline may be reluctant to expand service at a city where another vendor dominates the CRS market, for the incumbent's restrictive contracts may prevent its subscribers from switching to another system and thus will prevent a new carrier from obtaining a significant presence in the CRS market.

Since the vendors may use their control of the CRSs to prejudice the competitive position of other carriers, the Justice Department recommends that we consider readopting the Board's rules with changes designed to eliminate architectural bias, supracompetitive booking fees, and limitations on agency use of third-party hardware and software. The Justice Department also suggests that we consider rules eliminating the vendors' contract terms that keep subscribers from switching systems and preventing carriers from using their dominance of a regional airline market (*e.g.*, the area around a vendor's hub) as a tool for obtaining dominance in the CRS market.

C. The Proposed Rules

We tentatively find that CRS rules remain necessary, primarily to prevent unfair methods of competition, that is, practices identical or similar to practices proscribed by the antitrust laws. However, CRS rules also appear necessary to prevent consumer deception and to assure foreign carriers the fair and equal opportunity to compete guaranteed by our bilateral air service agreements.

Consumer deception is relevant, because without a rule prohibiting bias, vendors would most likely resume their practice of biasing displays. The services offered by their competitors would be poorly placed in the display or not shown at all, a result that would make it difficult for consumers to learn of airline services that could be more attractive than those offered by a vendor. The rules involve international issues, because we have consistently taken the position that foreign governments are obligated to ensure that U.S. carriers receive nondiscriminatory treatment in foreign CRSs. We accordingly must ensure that foreign carriers receive such treatment from U.S. systems.

We propose both to readopt the current rules and to consider rules fostering CRS competition and further limiting the competitive handicaps imposed by each vendor on other carriers. We prefer, of course, to rely on market forces rather than regulation to provide the best possible airline service for the public. However, CRS regulations remain necessary because little, if any, competition exists in the CRS business on the airline side. In considering possible new rules, we have focused on proposals that would enable competitive market forces to operate in the CRS business. In some instances, however, we are asking parties to comment on possible prescriptive regulations in areas where competition seems unlikely to prevail.

We are proposing first to readopt the Board's rules against display bias, discriminatory booking fees, denying participating carriers access to marketing data, and certain restrictive subscriber contract provisions. Without these rules, the vendors would be likely to resume the abuses that caused the Board to find that these rules were necessary.

We propose to use the industry's technological developments to lessen the vendors' control of the agencies' access to information on airline services and thereby reduce the vendors' ability to exercise their market power. Our proposed rules would allow agencies to use third-party equipment and software in conjunction with a CRS as long as they are compatible with the system. If agencies could use the products and services of other suppliers, they could reconfigure the information provided by the CRS so that it better meets their needs. We also propose to allow agencies to use one terminal for access to all the systems, a step that should encourage more agencies to use multiple systems. New suppliers of airline service databases could arise. Allowing agencies a greater ability to use multiple systems could also reduce the ability of carriers to use their dominance of regional airline markets as a tool for gaining dominance of regional CRS markets. If agencies had easier access to different systems, moreover, more competition for subscribers would exist, and that would encourage vendors to improve the functionality of their systems, a development that may strengthen airline competition.

To encourage competition for subscribers among the vendors, we are proposing to prohibit certain restrictive contract provisions used by vendors to

deny subscribers the opportunity to change systems or use multiple systems. Our proposal would shorten the maximum permissible contract term. Vendors also would not be allowed to require subscribers to make a minimum number of transactions on their terminals or to use a number of terminals comparable to the number used from another vendor. We also wish to consider prohibiting the tying of commissions and other airline marketing benefits to an agency's subscription to the vendor's system.

The proposals on third-party hardware and software, the use of a single terminal for access to all systems, and less restrictive subscriber contracts rely on competition to alleviate the vendors' market power.

The vendors now gain incremental revenues at the expense of their competitors in large part because of architectural bias. We may adopt a requirement that certain key functions be made as easy and reliable for non-vendor carriers as they are for vendors. Texas Air has alleged on the basis of its experience with improving System One's treatment of Continental's services that such a rule can be implemented without undue expense by the vendors. We ask parties to comment further on this proposal (and on similar proposals suggested by the Justice Department), since we need further information on whether such a requirement would be enforceable, practicable, and necessary.

The lack of competition among vendors for carrier participants gives vendors the ability to charge supracompetitive booking fees. We would like to consider rule proposals on booking fees that would be feasible and rely on competition to restrain fee levels. We do not want to adopt a rule that would require substantial regulation by us (*e.g.* a "reasonable fee" requirement) or that would unduly disrupt the manner in which vendors and agencies do business. None of the proposals before us satisfies all these goals, so we are not proposing a specific rule on booking fee levels in this notice.

Finally, we are proposing several other changes to the rules. We are requesting comment on requiring vendors to include portions of the rules in their contracts with participating carriers and subscribers, since that would enable carriers and agencies to obtain judicial relief if a vendor fails to carry out its obligations. To supplement the enforcement process we propose to allow parties to resolve disputes over their compliance with the rules through arbitration. The other changes proposed in this notice are primarily designed to clarify or reemphasize provisions in the existing rules.

In addition, while we are not proposing to prohibit vendors from using a systematic preference for on-line connections over interline connections, as some parties have requested, we ask commentors to address this issue further, since we wish to consider whether such a prohibition is warranted.

We wish to consider whether requiring travel agents to give consumers notice of their CRS affiliation (and any use of a biased display) would feasibly reduce the anticompetitive and deception aspects of CRS operations. The competitive problems presented by CRSs result in part from the travel agents' preference to book travellers on the carrier that operates the agent's CRS, a preference that results in part from the system's architectural features and in part from the friendly ties created by the CRS relationship and any override commission arrangement. In addition, some agencies have created biased displays for reasons other than implementing a customer's travel preferences. Commentors should discuss whether a notice requirement would promote competition and better decision-making by travellers.

The proposed rules, if adopted, appear likely to affect the vendors' methods of operations in ways that may require further rule changes (or could cause us to reconsider some of our proposals). For example, a rule reducing or eliminating architectural bias (and thus a significant portion of she vendors' incremental revenues) would change the vendors' incentives to compete for subscribers. We accordingly ask the parties to comment on the interrelationships between the proposals and the proposals' likely effects on the CRS business. We believe that the proposed rules would not strip the vendors of the ability to continue profiting from their development of the systems. Nonetheless, we do not intend to intervene in the systems' operations except to the extent that rules will feasibly reduce or eliminate significant anticompetitive practices without unnecessarily interfering with the legitimate management and development of the systems.

III. The Basis for the Proposed Rules

A. The Competitive Basis

We believe that CRS rules are necessary on competitive, deception, and international relations grounds. As indicated, the principal basis for the proposed rules is our conclusion that rules are needed to prevent unfair methods of competition, *i.e., competitive methods that violate the terms or the spirit of the antitrust laws.*

We tentatively find that each of the CRS vendors continues to have market power that could be used to undermine the competitive strength of other airlines in a manner contrary to the antitrust laws. The vendors also have the incentive to use that power to prejudice the competitive position of other airlines. We will begin our analysis by summarizing the Board's analysis, which examined the vendors' conduct during the period when no CRS rules restrained their conduct. We then explain why that analysis appears to remain valid today.

1. The Civil Aeronautics Board's Rationale

(a) *Market Definition.* Determining whether CRS regulations are needed initially requires a determination of the relevant product and geographic markets.

At the time of the Board's rulemaking, travel agents sold about 60–65 percent of all domestic air transportation. Travel agents, in turn, relied almost exclusively on CRSs to obtain information on airline schedules, fares, and seat availability, to make reservations, and to issue tickets. Few agencies used more than one CRS. As a result, each airline needed to be able to offer its services through each CRS in order to have its seats sold by that system's subscribers. NPRM at 17; Final Rule at 13. These facts caused the Board to find that CRS services constituted a separate market. Final Rule at 9–10.

The Board concluded that the relevant geographical markets were the national market and regional markets. Regional markets were relevant, because vendors concentrated their marketing efforts on those regions where they had a substantial airline presence, and each agency tended to choose the CRS offered by the carrier with a dominant airline presence in its region. Vendors tended to have dominant CRS shares in regions where they had substantial shares of the airline market. Final Rule at 11–13.

(b) *Evidence of Market Power.* Several factors convinced the Board that the CRS vendors had market power. The first factor was market share. Subscribers to the two largest CRSs, Sabre and Apollo, accounted for 80 percent of the revenues of all automated agencies and 70 percent of the revenues of all travel agencies in the United States at that time. Concentration was even more evident in regional markets. For example, Sabre subscribers accounted for 88 percent of the travel agency revenues in Dallas Fort Worth,

and Apollo subscribers accounted for 72 percent of the travel agency revenues in Denver. NPRM at 26; Final Rule at 9–13.

In addition, the Board found a number of very high barriers to new entry or to expansion by existing vendors. The barriers included high capital costs, much of which were "sunk," *i.e.*, not recoverable by an entrant upon exit from the market, as well as the long time required for development of a competitive product.

The CRS industry also had significant economies of scale, since the CRSs had high fixed costs but low marginal costs for each additional transaction made through a CRS. A system's average cost per transaction therefore declined as the number of transactions grew. NPRM at 13.

The vendors then relied on incremental airline revenues as the principal source of CRS revenues. This reliance kept any vendor that was not a large airline from competing successfully, because non-airline vendors could not afford to match the low booking and subscriber fees charged by airline vendors. This reliance and the agencies' preference for the CRS operated by the largest carrier in their region also made it difficult for airline vendors to compete in regions of the country where they did not have a significant airline presence. NPRM at 16, 25–26.

The vendors had also created barriers to agencies switching to a new system or using additional systems. These barriers were important because a new entrant would have to achieve a certain "critical mass" of subscribers in order to become economically viable due to the existence of economies of scale. Since nearly ninety percent of the potential subscriber base (by revenue) was already automated, a new entrant would have to "convert" a large number of subscribers from their existing systems or persuade them to obtain a second system in order to achieve the necessary critical mass. Many subscribers were reluctant to undergo the disruption of switching their automation system. The larger vendors reinforced that reluctance by imposing restrictive contract provisions on subscribers that precluded them from converting without breaching their contracts, *e.g.*, lengthy terms of up to ten years and "minimum use" provisions, such as Apollo's "95 percent rule", that kept subscribers from using a second system. NPRM at 16–17.

The Board's finding that the major vendors had earned excessive rates of return from their systems, when the profits from the incremental airline revenues generated by the systems were included, additionally supported its conclusion that they had market power. NPRM at 27; Final Rule at 13–15.

Furthermore, several of the major vendors' practices demonstrated market power. For example, the major vendors were able to charge participating carriers widely divergent prices ranging from thirty cents to three dollars per booking for different carriers. These fees bore no relationship to the cost of service and were unaffected by prices charged by other vendors. The vendors set their fees primarily on the basis of the competitive threat posed by the participating airline to the vendor's services and that airline's need for access to CRS services. Judge Posner had written in a book analyzing antitrust law that such persistent discrimination is usually good evidence of monopoly, for it implies that some customers are paying more than the cost of serving them, a situation that would not occur in a competitive market. NPRM at 27; Final Rule at 7–9.

In addition, the vendors' ability to maintain and increase bias in their information displays without fear of competitive response showed directly their ability to control output. NPRM at 27; Final Rule at 7–9. Each of the vendors biased its displays so that its own flights would appear either first in the display or as high in the display as possible, since travel agents were most likely to book a flight from the first screen of the display and likely to book the first flight shown. Civil Aeronautics Board, "Report to Congress on Airline Computer Reservations Systems" at 39. Since travel agencies generally preferred a neutral display that would enable them to find the most suitable flight for their clients without undue effort, the vendors' ability to deny their customers, the agencies, the type of display they preferred suggested their possession of market power. NPRM at 27; Final Rule at 9.

(c) *Injuries to Airline Competition.* Because the vendors competed against other carriers in the downstream airline market, they had incentives to use their control of the agencies' information source to reduce the competitive ability of other carriers. These incentives were increased by the CRS industry's heavy reliance on incremental airline revenue as the main source of CRS revenues. Booking fees for most airlines and subscriber fees were relatively low, and all the systems operated at a loss on a stand-alone basis. The larger systems, however, were exceedingly profitable when their incremental airline revenues were considered. NPRM at 27–28.

The record before the Board contained numerous examples showing that the major vendors could use—and had used—their CRS market power to reduce airline competition. Several key aspects of the airline business magnified the vendors' ability to harm their airline competitors.

First, as indicated, all airlines relied on a common distribution system, the travel agency system, for marketing their services.

Secondly, because airline profit margins are typically a small percentage of sales, an airline's ability to make a profit depends heavily on the addition or loss of a few marginal passengers on each flight. Because of this, most airlines could not afford to lose access to any significant number of travel agencies nationally or in regions where the airline wanted to compete. NPRM at 19; Final Rule at 12–13. Vendors accordingly could impose burdensome conditions and fees on other carriers as the price for making their services saleable through the CRSs. The two largest vendors thus threatened other carriers with exclusion from their CRSs unless the carriers signed net ticketing agreements under which the carriers would pay handling charges varying from $.50 to $12.10 for tickets on which one of the parties was named as a transporting carrier and the other was named as the ticketing carrier. NPRM at 15.

The importance of incremental passengers for airline profitability made display bias an effective competitive weapon against other airlines. Display bias skewed airline competition and injured consumers by interfering with travellers' ability to learn of competitive service and fare offerings and to base their travel choices on the competitive merits of the available services. The vendors' ability to use display bias (as well as other CRS practices) to obtain additional bookings from their subscribers could shift enough passengers to the vendor to make its services profitable and its competitors' services unprofitable. NPRM at 19–20.[2]

[2] United claims in this proceeding that it produced a statistical study showing that display bias had no effect on bookings before the rules took effect. United Reply at 9, fn. Neither United's claim nor the similar claim of American is entitled to any weight. United has not submitted the study, and these claims are contrary to the Board's findings and the vendors' recognition before and after the rules took effect that a flight's position in the display will affect travel agent bookings on that flight. For example, United conducted a study several years ago that showed that display bias did increase its booking shares at Apollo agencies. 1988 CRS Study at 153. The vendor documents submitted by the Justice Department in this proceeding include analyses of the effects of changing the use of elapsed time in creating CRS displays. Justice Dept. Comments, App. at 2, 82. These analyses confirm that the vendors believe that display position does affect booking shares.

Another method used by the vendors to prejudice their competitors was the charging of discriminatory booking fees. The least favored carriers paid as much as three dollars while other carriers paid as little as 30 cents per segment. Moreover, the airlines charged the highest booking fees tended to receive the worst CRS service, for they were subjected to the highest level of display bias. NPRM at 15.

The vendors' ability to dictate booking fees and other participation terms, and to use display bias to shift incremental revenues from their airline competitors to themselves, enabled them to increase their competitors' costs and thereby deter competitors from entering the vendors' airline markets or from offering lower fares. The Justice Department cited as an example American's response to New York Air's entry with low fares into the La Guardia-Detroit market that American had dominated. American increased the penalty against New York Air's flights in all markets by an additional 40 minutes in the Sabre display, an action which contributed to New York Air's abandonment of the La Guardia-Detroit market and which was intended to warn New York Air not to enter the La Guardia-Chicago market. Justice Department Comments on the Board's ANPRM at 89–90. When Continental began offering new discount fares in late 1981, American substantially delayed including those fares in the Sabre display that purportedly provided travel agents with a list of all fares available in individual city-pair markets. *Id.* at 146–151.

Indeed several smaller carriers had sought to obtain better CRS treatment by assuring vendors that they would not compete aggressively. NPRM at 28–29. Air Florida thus proposed to become a cohost in Apollo subject to the condition that it would not add scheduled service in any United city-pair markets during 1982 without first notifying United and that Air Florida's price for cohost status would be renegotiated if there were "a conflict in domestic markets," Justice Department Comments on the Board's ANPRM at 167.

The vendors' control over the marketing data generated by the systems also gave them an unfair competitive advantage. The vendors had access to detailed data on the booking transactions between their subscribers and all other airlines—data that were not available to other airlines, though created by bookings on their services. The vendors could use the data to develop and implement competitive initiatives for their airline business, such as override programs, in ways that their non-vendor competitors could not. NPRM at 29–30.

2. The Vendors' Current Market Power

Both the airline and CRS industries have changed since the Board adopted its rules in 1984. Mergers have reduced the number of carriers. The airlines have further refined and relied upon their development of hub and spoke route systems. The CRS industry has gone from six to four competitors, only one of which is still owned by or affiliated with a single airline. The remaining vendors have grown in size and sophistication. On the travel agency side of the business, competition has at times been fierce, but the two largest vendors have fairly successfully defended their subscriber bases through such practices as subscriber contract renewal campaigns and contract clauses designed to discourage subscribers from switching systems.

Despite the changes, the airlines controlling the CRSs still can potentially reduce airline competition. Like the Board, our analysis is based on findings that vendors have market power (there are no perfect substitutes for CRS services available to airlines or travel agencies, each vendor has a dominant market share in some regional markets, and new entry into the CRS business is unlikely).

(a) *Market Definition.* We find, like the Board, that the relevant geographical markets include regional markets as well as the national market. Although the major airlines, the CRSs, and the largest travel agencies operate throughout the nation, a vendor's ability to compete for subscribers at a city is heavily dependent on its share of the airline market at the city. Regional market share figures show a strong correlation between a vendor's dominance of the airline market and its dominance of the CRS market. Most agencies continue to prefer using the system offered by the dominant carrier in their region. Marketing Report at 24–26.

Equally valid is the Board's finding that the relevant product market consists of CRS services. CRSs have two principal sets of customers, the airlines and travel agencies. Neither has any real alternative to the CRS product due to the airlines' reliance on travel agencies for distributing their services and the agencies' reliance on CRSs for obtaining information on airline services and making airline transactions. Airlines still have no reasonably comparable alternative to CRSs for informing agents of their services. *See* Justice Dept. Comments at 10. While airlines can use advertising, for example, to increase consumer knowledge of their services and to advertise fares, advertising cannot provide detailed information on schedules in many markets or inform travellers whether specific fares are available on particular flights; information on the availability of seats and fares is practicably obtainable by consumers only through calling the airline or a travel agent, and a travel agent will almost always use a CRS to obtain the information required by the customer.

Agencies now sell a higher percentage of airline tickets, and the agencies make greater use of CRSs for carrying on their operations, than during the Board's rulemaking.

The major vendors' ability to charge other airlines high booking fees demonstrates that other carriers must participate in each CRS in order to reach its subscribers.[3] The Justice Department alleges that each system has a monopoly over access to its subscribers, since few agencies use more than one system. Justice Dept. Comments at 10–11.

American nonetheless argues that airlines do not need to participate in all the systems and that no system has a monopoly over access to its subscribers, since many agency locations use more than one CRS. According to American, agency locations producing one-third of all agency airline revenues use at least two systems. American Comments at 5–6. Texas Air has alleged that agencies with multiple systems constitute about eight percent of all agencies but 20 to 25 percent of airline bookings. Lenza Affidavit at 43, App. D to Texas Air Comments. However, even though a number of agency locations have access to more than one system, participation in each of the systems remains essential for each airline.

The operational practicalities of the agency business cause agency locations with multiple systems to use only one as the primary CRS and to use the others largely for secondary functions like issuing boarding passes on their vendors. Marketing Report at 26, 87–88.

[3] Southwest does not participate fully in any CRS (its availability is not shown in any CRS, and agents cannot make bookings through a CRS). Southwest points out that its nonparticipation in the systems makes it harder for agents to book its flights. SW Comments at 8. Southwest's ability to prosper nonetheless appears to result from several features of its operations that are not typical of other airlines. Marketing Report at 44. No vendor argues that Southwest's experience could be duplicated by other carriers. Some foreign carriers have also declined to participate in one or more systems, but they can do so for reasons not applicable to U.S. carriers.

No vendor now allows its U.S. subscribers to access another system through the hardware used as its own terminal. As a result, agencies using different systems must use separate terminals to access each of them. In addition, agencies using different systems now find it difficult to keep track of which system has which client's records and to train their employees to use CRSs with varying procedures. Finally, agencies using more than one system run the risk of violating the minimum use clauses imposed by the major vendors in their subscriber contracts.

Texas Air's data show that agency locations rarely use more than one system on a substantial basis. Texas Air states that 89 percent of the System One agencies using more than one CRS use one system for at least 80 percent of their bookings. Lenza Supp. Affidavit at 30–31, Texas Air Reply. *See also* "U.S. Travel Agency Survey," Travel Weekly (June 28, 1990) at 122.

American further contends that one event cited to support CRS regulations—the failure of Continental's 1984 attempt to withdraw from PARS in protest of its increased booking fees—does not prove that every carrier must participate in every CRS. After the Board adopted its CRS rules, PARS increased Continental's booking fee from $.25 on average to $1.80. Continental refused to pay the new fee. PARS then used its authority to bias its display against Continental, although it did not bar its subscribers from making bookings on Continental. Texas Air contends that Continental's bookings from PARS dropped by more than fifty percent as a result, a traffic loss that Continental could not afford, so the carrier resumed its participation in PARS within six weeks. Lenza Affidavit at 4–5, App. D to Texas Air Comment.

American concedes that Continental's bookings from PARS agents declined. American Reply at 11, n. 8. Nonetheless, American contends that the traffic loss was less severe than Texas Air claims, that Continental failed to develop alternatives for PARS agents before withdrawing from the system, and that Continental's motive was to manufacture evidence of the major vendors' asserted monopoly power. American Reply at 11, n. 8; Chemel Affidavit at 14–20, App. A to American Reply.

Despite American's contentions, it is clear that Continental ultimately decided that it could not afford to continue its withdrawal from PARS, a system that then held a relatively small share of the national agency market, and that Continental's refusal to participate had no effect on PARS' fees.

Furthermore, American has not explained how Continental could have offset the effects of PARS' bias against its direct services and the elimination of its connecting services from PARS' display. As American admits, PARS removed all of Continental's connecting services from its display. Chemel Affidavit at 18, App. A to American Reply. Despite American's claims to the contrary, the Continental memoranda suggest that Continental's political and litigation strategy played a minor role in its decision-making. *See* Lenza Affidavit at 28–30, Texas Air Reply.

(b) *Evidence of Market Power: Market Shares.* As was true when the Board conducted its rulemaking, the vendors' market shares suggest that they have market power. Sabre and Apollo together have 71 percent of the national market, as measured by segments booked. Marketing Report at 51. However, Apollo's share has fallen significantly since the Board rulemaking, and Sabre's share has declined as well. Sabre, however, still has a 42 percent share, measured by segments booked by agencies in 1988. NPRM at Table 2; Marketing Report at 51. Moreover, the CRS industry is highly concentrated overall, since there are only four firms (as opposed to six in 1984) and no likelihood of new entry.

Regional markets are still important, and each of the vendors has a dominant market share in some regions. For example, in 1988 Sabre had 89 percent of the market in El Paso, 87 percent in Dallas, and 85 percent in Nashville. Apollo had a 60 percent share in Seattle and Honolulu and a 57 percent share in Denver. Sabre and Apollo, controlled by two carriers with hubs at Chicago, held 87 percent of the CRS market in that area. The smaller vendors also had large market shares in some areas of the country. Marketing Report at 99.

Although American and United dispute the continuing validity of the market share evidence in view of the decline in their market shares (especially for Apollo), the national market is still highly concentrated, as are many regional markets. Moreover, the declines in market share reflect past competition among vendors for subscribers and do not offset the continuing lack of any need for vendors to compete for airline participants.

(c) *Evidence of Market Power: Unlikelihood of New Entry.* The second factor cited by the Board as evidence of market power—the unlikelihood of new entry into the CRS business—is still valid. No one has entered the CRS business since the Board adopted its rules, and the only non-airline vendor, MARSPLUS, failed. Justice Dept. Comments at 30–31.

New entry into the U.S. CRS business remains so difficult under current conditions that it cannot be expected. The barriers to entry cited by the Board still exist: the costs of developing a CRS would be substantial; the CRS business has large economies of scale that would require an entrant to obtain a large subscriber base to compete efficiently, yet obtaining the minimum number of subscribers would be difficult due to the reluctance of agencies to switch systems and the restrictive contract terms imposed by the vendors on their subscribers; and the vendors' reliance on incremental revenues for a major share of their CRS revenues gives the incumbent vendors a significant edge in bidding for subscribers against a new entrant without a substantial amount of airline operations. Justice Dept. Comments at 30–32. A non-airline would encounter an additional difficulty in competing for subscribers: travel agencies prefer to use an airline system because they believe that doing so will enable them to offer better service and obtain higher commissions. Marketing Report at 24–26. If agencies could use a single terminal for access to several CRSs and databases (and software that would facilitate such access and such tasks as recordkeeping), new firms could enter the business of providing CRS-type services to travel agencies; vendors now deny their subscribers the right to use CRS terminals to access other systems, however.

American argues that entry would not be so difficult due to the substantial turnover in the agency industry, since two to three thousand new agency locations open each year and need automation. American Reply, Exhibit 3. While this turnover would create some opportunity for CRS entrants, American's statistics overstate that opportunity. As Texas Air notes, many new locations are small businesses with a high failure rate that would not provide a solid subscriber base for an entrant. Many other new locations are branches of existing agencies that already have a CRS relationship and are unlikely to choose a new system for the branch. On balance, we believe that successful entry and expansion depend on the ability to convert existing agencies, a task that remains difficult.

In addition to the agencies' natural reluctance to switch systems, the vendors impose various contractual requirements on their subscribers to

prevent them from switching to another system.

These contract requirements, discussed below in detail, include five-year contract terms and liquidated damages provisions. Vendors also undertake periodic renewal campaigns to obtain new five-year contracts from their subscribers long before the existing contracts expire, and they require new five-year contracts when subscribers add or change their CRS equipment. Although long-term contracts often serve legitimate business purposes in the U.S. economy, the vendors' contracts appear to be designed instead to reduce competition for subscribers. As a result, a new vendor would encounter great difficulty in obtaining an adequate subscriber base, and existing vendors find it difficult to increase their market share. *See, e.g.*, Marketing Report at 85–91.

(d) *Evidence of Market Power: Vendor Conduct.* The third factor relied on by the Board consisted of several types of vendor practices that would not have been possible in a competitive industry. While the current rules prohibit the conduct that had constituted the clearest proof of market power—display bias and discriminatory booking fees, the vendors have engaged in other practices that demonstrate an ability to operate free of competitive restraints.

(i) *Booking Fees.* The best evidence of the vendors' market power is their ability to charge their airline competitors supracompetitive booking fees. Each carrier must participate in each system in order to reach that system's subscribers. Moreover, travel agencies have no incentive to choose a system because it has lower booking fees than other systems, for the agencies do not pay the fees, and participating airlines have no way of encouraging agencies to choose the CRS with the lowest fees.

After the Board adopted its rule prohibiting discriminatory booking fees, each of the vendors raised its booking fees substantially for most participating carriers; a few carriers, primarily new entrants, had paid even higher fees before the rules became effective. For several years the vendors charged $1.85 per segment booked for standard CRS service ($1.95 for most major carrier participants in Sabre) and usually $2.10 per segment booked if direct access was used (DATAS II had a $2 fee). Marketing Report at 56–S7. Since there was a separate fee for each segment, a round trip consisting of two connecting flights in each direction resulted in a booking fee charge of $7.40 ($8.40 if direct access was used).

The vendors had not increased their fees for several years after 1984. Last year, however, Sabre increased its booking fees from $1.85 to $2 for basic bookings and from $2.10 to $2.25 for bookings made on direct access. Worldspan and System One matched Sabre's increases. Apollo, on the other hand, revised its fee schedule so that carriers will pay $1 for each basic booking, $1.15 for each direct access booking, and different charges for other CRS transactions, *e.g.*, $.20 for each cancelled booking. Apollo expects its total booking fee revenue to increase by eight percent as a result of these changes. Covia Supp. Comments; Travel Weekly (June 28, 1990).

The Board chose not to prohibit vendors from charging booking fees. It anticipated that large non-vendors would have some bargaining power that could be used to keep fees relatively close to reasonable levels. Final Rule at 31. However, no such bargaining occurred; in addition, as shown, Continental's effort to force a reduction in PARS' fees was unsuccessful. Moreover, while the three smaller vendors initially charged participation fees that were substantially lower than those charged by American and United, their lower fees had no impact on the business of the two large vendors. Marketing Report at 83–84.

When we analyzed the vendors' booking fees in 1988, we concluded that the booking fees, at least for the major vendors, had substantially exceeded their costs in 1986. Sabre's average booking fee was 2.3 times the estimated average cost of a booking transaction on Sabre, while Apollo's average booking fee was 1.9 times the estimated average cost of a booking transaction on Apollo. 1988 CRS Study at 110.

These fees produced high rates of return on invested capital for the two vendors in 1985 and 1986: 50 percent for Apollo and 75 to 90 percent for Sabre. 1988 CRS Study at 85–88. Similarly, on an internal rate of return basis, Apollo and Sabre in 1986 had estimated returns of 53 and 69 percent, respectively, assuming that 40 percent of the incremental revenues generated by the systems became additional airline earnings; their estimated returns would be 109 percent and 130 percent if, as vendors estimated, 80 percent of the incremental revenues became added airline earnings. 1988 CRS Study at 74–79. These returns were comparable to those earned in earlier years, and the major vendors expected their systems to continue generating high levels of profits. 1988 CRS Study at 74–79. (These calculations include the estimated incremental revenues received by each vendor but are not adjusted to reflect the revenues lost at those agencies that subscribed to other systems and thus produced incremental revenues for competing vendors.)

The vendors would be unlikely to obtain such high rates of return over a period of years in a competitive industry. The persistence of such high returns suggests both that vendors need not fear new entry into the CRS business and that airlines will accept fees well above costs because they cannot afford to end their participation in any system. The Justice Department accordingly has concluded that the vendors' supracompetitive booking fees reflect their market power. Justice Dept. Comments at 11–14, 43–44.

While American, United, and Covia attack the past findings that their booking fees are at supracompetitive levels, their challenges appear unpersuasive. In particular, they do not show how competition has affected, or could affect, booking fee levels.

Neither of the major vendors has provided a cost analysis showing that their booking fees are reasonably related to their costs or substantiating the claim that CRS fees are lower than a carrier's internal reservations expense. United alleges that in 1986 its internal cost of processing a reservation made as a result of a telephone call from an agent or traveller exceeded $2.50. United Comments at 9. However, bookings usually are for roundtrips, and the outbound and return trips each will often consist of two or more segments. Participating carriers must pay a separate booking fee to the vendor for each segment of each trip. In addition, the $2.50 figure cannot be compared with just the booking fee, because carriers also pay commissions to agents when they make CRS bookings.

United cites the practice of some carriers of charging car rental firms $2 to $2.50 for bookings through an airline's internal reservations system as evidence of the carriers' internal reservations costs. United Comments at 9. This figure does not necessarily reflect the carriers' costs, however. Similarly, American invalidly contends that the higher booking fees ($2.25 for most bookings) established by the European systems, Amadeus and Galileo, suggest that the U.S. fees are reasonable. American Comments at 27. American has not shown that the European systems' costs are equivalent to the U.S. vendors' costs.

While the major vendors contend that the fees are not excessive, our 1988 study concluded the contrary, and we see no reason to question that report's conclusions. The study's 1988 estimates

assumed, as noted, that a vendor obtains incremental revenues when an agency uses its system. We used the vendors' own estimates of the amount of incremental revenues. *See* App. III to 1988 CRS Study. Nonetheless, American challenges our findings that incremental revenues exist and presents an analysis that allegedly shows that our study miscalculated the amount of incremental revenues. App. A to Dorman Affidavit, App. 8 to American Reply. In our view the American analysis cannot invalidate our analyses based on the vendors' own studies.

Finally, United has presented a chart purportedly showing that other firms in the computer and software industries have achieved comparable (and sometimes higher) rates of return than those enjoyed by the CRS vendors. According to the chart, United's internal rate of return on Apollo since 1976 has been 26.2 percent annually. App. D to United Comments. The chart, however, does not identify the periods used for comparison and does not attempt to show that the returns of the firms listed in the chart are representative of their industries. Moreover, the two firms with the rates of return closest to Apollo's return, Ashton-Tate and Cullinet Software, have incurred substantial losses recently, while Apollo apparently has remained quite profitable.

(ii) *Display Bias.* Although the rules proscribe the use of factors related to carrier identity in editing and ranking the display of airline services, the vendors continue to search for ways of using carrier-neutral factors in ways that will improve the display position of the vendor's flights and hence its share of bookings, as demonstrated by the evidence submitted by the Justice Department. Justice Dept. Comments at 17. We doubt that vendors could pursue such means of increasing their booking share while maintaining their subscriber base if there were competition in the CRS business.

(iii) *Incremental Revenues.* An additional competitive handicap imposed on non-vendor carriers is the vendors' receipt of incremental revenues from their subscribers. Incremental revenues, as indicated, are the additional airline revenues a vendor obtains when an agency uses its CRS. While incremental revenues are in part created by factors that do not involve practices contrary to the antitrust laws, they result in part from the vendors' decisions to structure CRS functions so that a travel agent can more easily and reliably make bookings on the carrier operating the agent's CRS than on any other carrier.

Before demonstrating that this architectural bias is a significant source of incremental revenues, however, we will explain the basis for our conclusion that vendors obtain incremental revenues.

Various CRS studies have concluded that vendors continue to receive large incremental revenues. The 1988 CRS Study estimated that each vendor received incremental revenues (referred to in that report as the halo effect) equal to 12 to 40 percent of its revenues from its subscribers (as noted in the study, the vendors' internal estimates of the amount of incremental revenues ranged from 9 to 15 percent). *Id.* at 119 and App. III. More recently we concluded after reviewing additional internal studies from the vendors that most of the vendors' own analyses of incremental revenues suggested that their incremental revenues could be even greater, perhaps as high as 20 to 30 percent for American and United. Marketing Report at 62–63.

Using the most conservative of these figures, 13.8 and 15 percent, it was estimated that this incremental traffic from Apollo and Sabre contributed $105 million to $110 million in 1986 to each airline's earnings under the assumption that 40 percent of the incremental revenues became additional airline earnings. These amounts were approximately equal to each system's invested capital, to Sabre's net operating income, and to 150 percent of Apollo's net operating income. If, as the vendors had estimated, 80 percent of the incremental revenues become additional airline earnings, each system's net contribution to the airline's earnings would have been $210 million to $220 million. 1988 CRS Study at 58, 81.

These calculations, however, cannot yield an estimate of the net value of incremental revenues to any vendor. A vendor's loss of traffic to other vendors due to their incremental revenues will offset its own incremental revenues to some extent. Determining the amount of revenues lost by any carrier due to incremental revenues obtained by vendors (or other vendors) would require determining what share of the traffic a carrier would otherwise have obtained in each market, an impractical undertaking. 1988 CRS Study at 47.

Texas Air alleges that the incremental revenue phenomenon can severely damage a carrier's ability to compete. It cites Denver, a hub for Continental and United, as an example. Apollo has a 56 percent share of the CRS market at Denver, while System One has a 17 percent share. In June 1989 United operated 44 percent of the seats at Denver, while Continental operated 41 percent. Sabre and PARS subscribers booked respectively 43 and 40 percent of their Denver passengers on United flights and 32 percent of their passengers on Continental flights. Continental received only 25 percent of the bookings by Apollo subscribers, while United obtained 50 percent of their bookings. Texas Air Comments at 10–11. United obtained an even larger share of bookings on Denver flights from Apollo subscribers on a nationwide basis: 64 percent. Continental, in contrast, obtained only 26 percent of their bookings. *Ibid.*

According to Texas Air, Continental's inability to obtain a fair share of the bookings at Apollo agencies forced it to reduce service at Denver for lack of traffic. Texas Air Comments at 11. *See also* Attachment M to Lenza Affidavit, App. D to Texas Air Comments (examples of Apollo subscribers' preference for United in Cleveland markets).

Texas Air has provided similar statistical data showing that American usually receives a larger share of bookings at Sabre agencies in each city and on a nationwide basis. For example, at New Orleans Sabre agents booked American 18 percent of the time, while at Apollo, PARS, and System One agencies American received 11, 11, and 15 percent of the bookings, respectively. Lenza Supp. Affidavit at 6–7, attached to Texas Air Reply.

As an additional example, Texas Air's statistics show that United's average booking share at Chicago agencies is 38 percent, while United receives 45 percent of the bookings at Apollo agencies. American's average booking share at all Chicago agencies is 19 percent but is 26 percent at Sabre agencies. Attachment A at 4, Texas Air Reply.

We think that there can be no doubt that each vendor usually obtains a larger share of an agency's revenues when the agency uses its CRS. As the Justice Department points out, the vendors' documents included in its comments demonstrate that the vendors frequently base their subscriber charges on the assumption that gaining an agency as a subscriber will produce incremental revenues. Justice Dept. Comments at 15–16, citing documents submitted by four vendors. Our findings that incremental revenues exist similarly rest in large part on internal documents of the vendors. See Marketing Report at 62–63 and 1988 CRS Study at App. III.

Texas Air's nationwide data, moreover, provide statistics on the

number and percentage of bookings made on each major carrier on the four largest systems in 101 cities for the period of August 1, 1989 through December 31, 1989. The data cover 100 million bookings, of which 39 million were made through Sabre and 34 million through Apollo. American obtained 20 percent of the bookings by Sabre subscribers while no other carrier obtained as much as 14 percent of their bookings. Similarly, United received 27 percent of all bookings by Apollo subscribers while no other carrier obtained more than 11 percent of the total bookings on Apollo. American's share of bookings on all systems was only 15 percent, while United's share was 16 percent. Attachment A at 16, Texas Air Reply. Differences of this magnitude among such large numbers of observations cannot be random.

American argues that incremental revenues do not exist, because each vendor's share of its subscribers' bookings in a city is neither always larger than its share of the airline traffic at the city nor always larger than its share of the bookings of the subscribers of each of the other vendors at the city. According to American, at 29 of the 101 cities it serves its share of its subscribers' bookings is smaller than its seat share (the comparable figures for United, Delta, THA, and Eastern are 14 of 114 cities, 13 of 104 cities, 9 of 74 cities, and 1 of 69 cities). Chemel Affidavit at 5, App. A to American Reply. Similarly, in a number of cities a non-vendor carrier obtained a larger gap between its seat share and its booking share at a system's subscribers than did the vendor carrier: in 54 of American's 101 cities, 45 of United's 114 cities, 36 of Delta's 104 cities, 51 of TWA's 74 cities, and 14 of Eastern's 69 cities. *Id.* at 6. Finally, at 22 percent of American's cities, 14 percent of United's cities, 16 percent of Delta's cities, and 16 percent of TWA's cities (but at none of Eastern's cities), the vendor received a larger share of bookings by another system's subscribers than it did on its own. *Id.* at 7–8.

American's statistics prove that incremental revenues exist. Each vendor except American receives a larger share of its subscribers' bookings than its seat share in at least 88 percent of the cities it serves, and American's booking share exceeds its seat share in 71 percent of its cities. Each of the other vendors receives a larger share of bookings from its subscribers than it does in each of the other systems in at least 84 percent of the cities it serves, and American achieves that result in 78 percent of its cities. If subscribers were not more likely to book clients on their vendor's flights, these results would not occur. Reynolds Reply Affidavit at 2–10.

The apparent anomalies found by American, moreover, are consistent with the existence of incremental revenues. First, no one claims that an agency's choice of CRS is the only factor determining which carriers get a booking preference. Override commissions and customer preferences are obviously important as well. *See, e.g.*, Marketing Report at 63. Secondly, the cities cited by American where a vendor failed to obtain a share of its subscribers' bookings that exceeded its seat share, where a participating carrier obtained a larger share gap than the vendor, or where the vendor received a larger share gap from another vendor's subscribers, tend to be smaller cities or cities where the vendor's airline presence was small. According to Texas Air, the 22 cities where American received a smaller booking share at Sabre agencies than it did at the agencies using one of the other systems accounted for less than eleven percent of American's domestic scheduled seats. Lenza Supp. Affidavit at 9, Texas Air Reply.[4] In some examples cited by American, one vendor had few subscribers at the city; in particular, American cites Raleigh-Durham as a city where American received a higher booking share in PARS agencies than in Sabre agencies, but Raleigh-Durham had only one PARS agency, and the subscribers to the other three systems booked American less often than did the Sabre agencies at that city. Lenza Supp. Affidavit at 9, n. 6, Texas Air Reply. Several of the cities are also vacation destinations, where the vendor's share of local bookings may be unrepresentative of its traffic because so many bookings are made at the point of origin. NW/TWA Reply at 5. Moreover, in those cases where a vendor obtained a larger gap between its seat share and its booking share from another vendor's subscribers than it did from its own subscribers, American has not shown that the other vendor did not benefit from a large share gap from its subscribers. Compare Exhibit C to Chemel Affidavit with Exhibit E.

It may be that the vendor carriers' incremental revenues enable them to operate more efficiently, since their flights would have higher load factors to the extent that these carriers do not increase capacity. While that would increase the efficiency of industry operations, and while monopolies may operate more efficiently due to their greater economies of scale, we believe this potential benefit cannot outweigh the benefits of competition, especially since competition provides incentives for increased productivity and technological innovation.

(iv) *Architectural Bias.* The vendors' incremental revenues result in large part from their design of their systems, that is, from architectural bias. Architectural bias refers to system features that make it easier and more reliable for an agent to obtain information and make a booking on the vendor than on any participating carrier. Because vendors have chosen not to make bookings on their competitors as easy and reliable as bookings on themselves, they obtain large amounts of additional airline bookings from their subscribers.

The carrier that is the "host" of the system, that is, the carrier whose computer is identical with the CRS computer, has advantages in giving agents realtime access to its availability information and reservations capability, since only one computer is used in implementing the agent's information and booking requests. To enable its subscribers to obtain information and make bookings on other carriers as reliably and easily as on the host carrier, the vendor must develop appropriate communications links and transaction procedures. With one exception, the host of each system is the carrier that originally developed it—American for Sabre, United for Apollo, Eastern for System One, and Delta for DATAS II. The exception is PARS, which now has two hosts, TWA and Northwest. Marketing Report at 65–66. Northwest, TWA, and Delta, however, plan to make Worldspan a neutral system that will not have a host, a process that will take up to three years.

The difference in reliability and convenience—architectural bias—affects agent bookings and hence airline competition. Agent bookings are affected because many travellers do not have a carrier preference and because travel agents then tend to prefer booking carriers whose information is the most reliable and timely and whose services are the easiest and fastest to book. Most airline CRS owners have a marked advantage in this regard because their CRS computer is also the computer for the host airline's own operations, so the CRS has realtime information and

[4] Texas Air alleges that incremental revenues are usually less at cities where a vendor has either a very large or a very small airline share, because it has less opportunity to obtain additional bookings. As a result, other factors are more likely to outweigh the incremental revenue effect. Reynolds Reply Affidavit at 10, n. 6. That vendors have less ability to obtain incremental revenues at cities where they have already a large traffic share is consistent with our findings. Marketing Report at 63.

booking capability on the host's flights (the Marketing Report contains a detailed description of functionality inequality at pages 65–70). In contrast, obtaining information and making a booking on another carrier will require communications between the CRS and the other carrier's internal computer system. Because of this need for communications between computers, a CRS' information on a participating carrier's services may be outdated when a subscriber sees it on the display, while the information on the vendor's services will never be outdated. Similarly, bookings made on participating carriers will be less reliable than those made on the vendor because of communications delays.

Each CRS has developed a direct access feature using direct computer-to-computer links that allows agents to view and interact with the internal systems of participating carriers. CRSs today provide different types of direct access. For example, some provide "look but not book," while others provide a "look and book" capability. Both types allow an agent to use the CRS to see the display of a participating carrier's internal system; "look and book" also allows the agent to make the booking in the other carrier's internal system.

While direct access has improved the timeliness and reliability of CRS information, it has not entirely solved the problems of unreliable bookings (*see* Marketing Report at 66–70 and discussion below). The major vendors' dual role as airlines and system owners has created strong incentives for them to limit more effective development of improved functionality. Moreover, some of the reduction of this reliability ("no-rec") problem for subscribers has come not as a result of technological development, but rather as a result of contractual provisions that place the cost of "no-rec" passengers on the participating carriers. As part of the typical contract between vendors and participants for direct access services, participants must agree to accept each ticket bearing a direct access code, whether or not the participant has a record of the passenger's reservation. This increases participants' risks of overbooking costs and also gives them less control over management of their inventory than the host enjoys. Thus, while CRS reliability for subscribers has improved, at least some of the improvement has come not through improved technology, but rather through increased cost and risk being imposed on non-vendor carriers. Another drawback of the direct access features currently available is that they are more cumbersome to access and use than the primary display, and many agents are unwilling to make that effort when they can sell seats on the vendor's flights without additional work. Marketing Report at 69.

The second advantage given the vendor from system architecture is that many routine functions performed by subscribers are easier or quicker to carry out when bookings are made on its flights. For example, obtaining quick confirmation of the original booking, changing complex itineraries, changing the name of the passenger associated with the passenger name record, and issuing boarding passes are all slightly easier, quicker, or more reliable when the agent is working with bookings on the host's flights. The format and procedures are also more familiar to the agent when working with the host's services. Many travel agents face strong productivity pressures, and saving time or avoiding complications can induce them to select one carrier over another. Thus, even those, agents that are willing to use extra key strokes to access features like direct access may be discouraged from booking a participating carrier over a host by the prospect that possible changes to the participant's direct access booking will require more time and effort to make.

As of now, the systems are not structured to make information searches and bookings on participating carrier services as easy and reliable as they are for the host's services. Vendors have created procedures for making bookings on other carriers that require more work of the agent. For example, if an agent uses Sabre's direct access to make a booking, the agent cannot issue a boarding pass from direct access and must return to the Sabre computer to do that. Similarly, a Sabre agent using direct access must recreate the passenger name record in the direct access mode, for it is not automatically carried over from the Sabre record. Lenza Affidavit at 36, App. D to Texas Air Comments; Marketing Report at 69. As a result, the vendors are able to divert substantial revenues from their competitors to themselves.

The agents' inability to obtain equally accurate and reliable information and reservations on participating carriers is a great incentive for agents to book travellers on the vendor. That vendors have long been aware of the advantages of unequal functionality is demonstrated by a 1980 statement of American's President, Robert Crandall. In a memorandum on Sabre he wrote that American "must find a way to skew the usage rates of Sabre" in similar ways if American determined that Apollo provided United a larger booking preference than Sabre did for American, "either through conscious bias or by making it inconvenient to book carriers other than United." Texas Air Comments at 15.

Texas Air believes, moreover, that the relative inefficiencies of Sabre's direct access features stem from Sabre's business decision to make bookings on participating carriers more inconvenient. According to Texas Air, Sabre's deficiencies cause travel agents to make relatively little use of its direct access features. Lenza Affidavit at 37, App. D to Texas Air Comments. In contrast, agents appear to make much greater use of the direct access features of other systems. Marketing Report at 69. Delta asserts more generally that vendors have chosen to make bookings on participating carriers more difficult so they can obtain additional airline revenues from their subscribers. Delta Comments at 23.

While the precise degree to which architectural bias causes incremental revenues is unclear, the industry's experience shows that it is a major cause. In several instances a carrier's share of bookings increased at agencies using one system because the reliability of the system's information and bookings on that carrier improved. In particular, although Eastern remains System One's host, when Continental improved the communications links between itself and System One, it found that doing so significantly increased its share of bookings at System One agencies. Justice Dept. Comments at 20; Texas Air Comments at 16–17. Similarly, when Northwest became a partner in PARS, it also became a host and has obtained incremental revenues from PARS. *See also* Marketing Report at 65–70 (the report cites an additional example, Midway's belief that its booking share at Sabre agencies increased after it began using Sabre as its internal reservations system).

On the other hand, when USAir became a partner in Covia, it kept its own internal reservations system and so did not become a host in Apollo. Neither the display of USAir's information in Apollo nor the links between Apollo and USAir's computer changed. USAir has not obtained incremental revenues from Apollo. Justice Dept. Comments at 20.

In supplemental comments American has taken issue with the statement in the Marketing Report that Midway believed that its share of bookings at Sabre agencies increased after Midway began using Sabre as its internal reservations system. American claims

that Midway's belief is incorrect and inconsistent with the statistical analyses provided by American showing that Midway's Sabre bookings have not kept pace with Midway's enplanement growth and that Midway's bookings in other CRSs have grown at a faster rate than Midway's bookings in Sabre.

American's claim is unacceptable. First, if Midway's belief were wrong, its booking share at Sabre agencies in Chicago and elsewhere would not have increased since it began using Sabre as its internal system. American has provided no figures on changes in Midway's booking share at Sabre agencies, an omission that suggests that that information would demonstrate the validity of Midway's belief. The statistics provided by American have little relevance to this issue. In addition, as Midway states, other events are the likely cause of the alleged anomalies cited by American: Midway began operating a hub at Philadelphia, a city where Sabre has a relatively small market share; PARS obtained many new subscribers in Michigan and Minnesota, states where Midway obtains a substantial portion of its traffic; and American added many flights in the Chicago-Florida markets, markets that Midway and United had dominated earlier. Finally, Midway notes that when American was trying to persuade Midway to switch to Sabre for its internal reservations operations, American's marketing staff told Midway it would receive incremental revenues.

Midway further alleges that bookings on American are still easier for Sabre agents than are bookings on Midway, although bookings on Midway are easier than are bookings on other participating carriers.

To the extent that a vendor fails to make the investment needed to eliminate architectural bias and establish equal functionality for bookings on the vendor and all participating carriers, the vendor is denying travel agencies a feature that many desire. Many travel agents would prefer to use a system that enables them to make a booking on any carrier as easily as on the vendor and that provides equally reliable information and reservations services on every carrier. Their wish for such equal functionality is shown by some agencies' development of software programs that enable their agents to gain access to a participating carrier's internal reservations system without the effort ordinarily required by the CRS for such access. Marketing Report at 70.

Although American, United, and Covia contend that architectural bias is nonexistent or insignificant, they have neither denied the validity of the cited examples of booking share changes (with the exception of Midway's experience) nor provided any other explanation for those changes. We think these examples demonstrate that architectural bias is an important cause of incremental revenues. The Justice Department's own investigation into CRS matters has convinced it that a major cause of incremental revenues (and quite possibly the principal cause) is architectural bias. Justice Dept. Comments at 17–21.

American has recognized elsewhere that the differences in convenience can affect booking patterns, for its agreement with Lufthansa settling various CRS issues included Lufthansa's commitment to change its CRS, START, so that an agent needed to make the same number of keystrokes to access either the Lufthansa display or a neutral display. American alleged that that change would benefit U.S. carriers. Joint App. of American and Lufthansa, Docket 46165, at 3.

Moreover, the vendors behave as though switching an agency from another carrier's system to their own will improve their share of bookings. If, as American claims, the only relevant factor were the agency's friendly relationship with a vendor, then the switch in systems would be unnecessary to obtain a larger share of the agency's bookings (or would be treated as a result of the agency's change in carrier preferences, not as an independent event of value). Similarly, override commissions could not be the source of incremental revenues unless vendors substantially tied an agency's eligibility for such commissions with its subscription to the vendor's CRS.

American, United and Covia contend that their current versions of direct access make architectural bias nonexistent because there is no practical difference between host carriers and participants in terms of the functions a subscriber may perform, the ease with which they can perform them, and the timeliness and accuracy of information. However, these improvements have not eliminated the reliability and convenience factors constituting architectural bias. First, the major vendors' own comments concede that making bookings on the host carrier may be easier than on other carriers. American Reply at 23–24; Covia Reply, Powers Affidavit at 13, 14.

Secondly, it has been widely noted that CRSs whose hosts have a large share of the airline service in a region have a strong advantage in selling to subscribers located there. While some of that advantage flows from ties between airline-related benefits and the subscriber's choice of automation, and another possible source could be the dominant carrier's refusal to participate in enhancements offered by competing systems (e.g., Northwest's withdrawal from Sabre's direct access enhancement), functionality differences are clearly a significant source of that advantage. Agents perceive that the most reliable and up-to-date information and best functionality for a carrier will come from the CRS of which it is the host. ASTA Comments at 9.

American claims that bookings made on participating carriers through Sabre must be reliable because so few are rejected by the carriers. American Reply, Jones Affidavit at 11. However, we believe that the number of rejected bookings seriously understates the scope of the problem because carriers cannot afford to reject agent bookings; doing so would antagonize the agent. In addition, the reliability problem in part concerns the lack of any record of the booking during the period required for sending the booking message and, if the CRS incorrectly showed the seat's availability, for manually processing the message after its rejection by the carrier's computer. Marketing Report at 68–69. Finally, the Justice Department has submitted an internal document of one carrier stating that booking errors on one system cost it several million dollars each year. Justice Dept. Comments, App. at 12–13.

The other major contention made by American, United and Covia is based on a false premise. They insist that no travel agent would choose a vendor's flight for a customer on the basis of system architecture when another carrier is offering superior service. See, e.g., American Reply, Jones Affidavit at 27. If the traveller has a preference for a particular carrier, of course, the agent will honor the traveller's choice. But a significant proportion of travellers, perhaps one-fourth of business travellers and one-half of leisure travellers, have no carrier preference, and then the agent is largely free to select the carrier on which to book the traveller. Marketing Report at 29.

In many cases, however, where the agent chooses the carrier, the choice may not be conscious—the agent may not undertake the search necessary to determine that a better alternative is available. In other cases, moreover, the service and fares of the carriers will be closely comparable; carriers often charge similar fares and schedule their flights for the most popular departure times rather than randomly throughout the day. As a result, the ease and

reliability of the booking process can often determine which carrier will be recommended by an agent.

3. Injuries to Airline Competition

As was true before the CRS rules took effect, the vendors have the ability and incentive to use their continuing market power to prejudice their airline competitors by raising the competitors' costs and diverting traffic. Although the rules proscribed the most blatant methods by which vendors injured competitors, the rules were never expected to change the CRS industry's structure and have not eliminated the vendors' power or incentive to reduce airline competition. The vendors have used their control of the agencies' information source on airline services to prejudice the competitive position of other airlines.

(a) *Supracompetitive Booking Fees.* The high booking fees charged by the vendors have been causing competitive injury to participating carriers. In 1988 the vendors received almost $800 million in booking fees, of which $175 million were paid by airlines not owning any interest in a CRS. Marketing Report at 58. American, moreover, received over $200 million more in booking fees from Sabre than it paid to other vendors. *Id.* at 58.

The fee burden is greater than the vendors' stated fees per booking, according to the calculations of several participating carriers, for vendors assertedly charge booking fees for a significant number of transactions that do not represent bookings for participating carriers. Alaska, America West, and Midway, for example, estimate that Alaska's booking fee liability per segment flown is actually about $2.40 per booking. Alaska, America West & Midway Add. Comments at 3. These carriers claim that they must pay booking fees for several types of transactions that in their view do not constitute a booking. For example, vendors charge participating carriers when a travel agent creates a passenger name record (PNR) for the automatic issuance of a ticket by the CRS after the passenger booked the seat directly with the carrier. Similarly, vendors charge fees when an agent waitlists a traveller, a process that creates a PNR but no actual booking unless a seat becomes available at some later time.

(b) *Bias and Architectural Bias.* While display bias is proscribed, vendors select their display and ranking factors so as to give their own flights a better display position. This practice diverts travellers from the flights of non-vendor carriers to vendor flights because travel agents are more likely to book flights with the best display position. The comments suggest, moreover, that vendors have taken advantage of their control of their systems to impose procedures and editing criteria that cause more of their hubs to be used as connect points while excluding many of their competitors' hubs.

A more significant cause of traffic diversion, however, is architectural bias. As shown, the vendors' decisions not to equalize the convenience and reliability of transactions on their services and participating carrier services have caused agents to tend to prefer booking the vendor.

In addition to lost traffic, the poorer reliability of information and bookings on participating carriers imposes other costs on the vendors' competitors. One airline apparently incurred several million dollars of expenses each year because of the reject messages sent to one vendor due to booking errors and because of the overbookings that resulted from inaccurate availability information in the CRS. The unreliability of CRS bookings additionally made it difficult for the airline to carry out its yield management program. Justice Dept. Comments, App. at 12.

4. Developments Since the Rules' Adoption

While the CRS business has changed in some respects since the Board's 1984 rulemaking, those changes have not significantly weakened the vendors' market power or their incentive to use it to reduce airline competition.

In 1984 each system was owned by a single airline, except for the one non-airline system that later failed. Since then, each CRS except Sabre has become affiliated with at least one other U.S. carrier, and eight U.S. carriers now own an interest in, or are affiliated with, a CRS. Nonetheless, CRS rules still appear necessary. The largest system, Sabre, is affiliated with only one carrier, and American appears unlikely to lose control of Sabre's airline booking operations due to the high value of even a small ownership interest in Sabre and the relatively small size of the U.S. carriers without a CRS interest, although several foreign carriers or U.S. non-airline firms may be able to acquire a significant degree of control over Sabre's operations. The second largest, Apollo, is operated by a United subsidiary even though USAir and several foreign carriers hold a half interest in Apollo.

In addition, the two major travel agent associations argue that the spread in ownership has not ended the CRS abuses. ASTA Comments at 18–19; ARTA Comments at 6–7. A CRS' acquisition of a new carrier partner could also result in another carrier taking advantage of the market power available through CRS ownership. Some commentors allege, for example, that Northwest has used its airline dominance at its hubs to compel agencies in those cities to switch to PARS. ARTA Comments at 6–7. A vendor carrier could induce agencies at its hubs to subscribe to its CRS by making override commissions and marketing benefits such as special help desks and the ability to waive discount fare restrictions and to book customers on flights with no available seats available only to agencies using its CRS. Marketing Report at 25. These practices would enable a dominant carrier to use its airline dominance at its hubs to obtain CRS dominance there, a result that would further strengthen its airline dominance, since its additional CRS subscribers will increase its incremental airline revenues at travel agencies in the hub cities.

Northwest's experience at its hubs of Minneapolis, Detroit, and Memphis demonstrates a vendor's ability to obtain a substantial CRS market share at its hubs. In 1986 travel agents in Minneapolis, Detroit, and Memphis respectively used PARS to make 1.8, 2.3, and zero percent of all CRS bookings in each city. 1988 CRS Study at 160, 161, 166. Northwest became a partner in PARS in late 1986. In 1988 PARS' share of bookings in Minneapolis, Detroit, and Memphis had grown to 20.3, 4.9, and 17.9 percent, respectively. Marketing Report at 99.

Although United contends that it no longer controls Covia's operations and so could not use the system to injure the competitive position of other carriers, United Comments at 4–6, we note that the comments filed by United and Covia both argue that rules are unnecessary even though two of the other Covia partners, USAir and British Airways, filed comments supporting a renewal of the CRS rules. In addition, United and Apollo share the same computer, a United subsidiary is Covia's managing partner, United employees are responsible for marketing Apollo in much of the United States, and United's 50 percent interest in Covia gives it veto power over major changes in the system's operations, including changes that could reduce architectural bias. Marketing Report at 46–47.

As indicated, the systems' communications links with the internal computer systems of participating carriers have greatly improved since 1984. Agents accordingly can obtain

better and more timely information on the airline services of participating carriers. Nonetheless, these improvements have not eliminated architectural bias and the vendors' ability to structure CRSs so as to produce incremental revenues.

Another technological development—the growing use of PCs as CRS terminals—could potentially enable agencies to obtain better information and access to different databases. Agencies using PCs as CRS terminals could develop programs that would enable them to reconfigure the data provided by the CRS so that the data better meet their needs for unbiased and complete travel information. In addition, PC terminals would enable an agent to use one terminal to gain access to any CRS or other database. 1988 CRS Study at 139–140. The vendors, however, for the most part have denied subscribers the ability to make much use of these developments. Although some vendors allow agencies to use some third-party hardware and software in conjunction with their CRS equipment, all vendors appear to be reluctant to permit such practices. No vendor, moreover, has allowed subscribers to use its CRS terminals to access another system.

5. The Vendors' Defenses

We recognize, as Covia points out, Covia Reply at 22, that in some respects CRSs, like the travel agency system itself, aid entry by new airlines. However, while CRSs clearly perform essential services efficiently, that is precisely why they have become vital for airlines. That the vendors have not used their control of the systems to eliminate airline competition (and that CRSs in some respects benefit airline competition) does not change the reality that CRSs confer market power on their operators and that that power is subject to abuse.

As Covia states, CRSs can enable agents to quickly learn of new airline service. Covia overlooks the ability of vendors, however, to limit the agents' knowledge of new competition. Before the rules took effect, vendors generally charged new competitors the highest booking fees, subjected new competitive service to bias so agents would be less likely to see it on the screen, and encouraged some carriers to promise not to compete aggressively with the vendor as the price of keeping their CRS access. Even with the rules, several carriers allege that some vendors handicap the creation of new routes and innovative fares by delaying the display of new connect points and new fare rules.

In one respect, the major vendors' arguments have some merit. They correctly state that a significant degree of competition among vendors for subscribers has existed and that this competition has lowered subscriber charges for many, though not all, travel agencies and has encouraged vendors to keep improving their systems, *e.g.*, by upgrading their direct access capabilities. The lack of competition on the participating airline side, however, has in some cases enabled the vendors to limit the systems' ability to provide timely and convenient information and booking capabilities on participating carriers. These functional limitations are harmful to those carriers' marketing ability but are less important to agents. Although the bias encourages agents to book on the vendor, it will not trouble many agents when the client has no airline preference, since the agents will often have no strong desire to book the traveller on a participating airline instead of the vendor. Moreover, architectural bias does not deny an agent the ability to obtain information or make a booking on a non-vendor airline when the agent needs that capability.

American claims that such practices as display bias and architectural bias cannot represent monopoly power since even the smallest systems have engaged in them. Dorman Affidavit, American Reply. We disagree, for this claim overlooks the possession by even the smallest vendors of monopoly power over access to their subscribers and their possession of a dominant position in some regional CRS markets.

Finally, we cannot accept American's argument that the rules themselves have made matters worse for participating airlines. American suggests that the rules caused it to charge much higher booking fees to most airlines since the rules invalidated its existing contracts with participating carriers that gave most of them CRS access for lower fees. American Comments at 4. This suggestion has no merit—while the rules invalidated the earlier contracts, they did not require American to impose supracompetitive fees on participating carriers. Even if, as American claims, the rules had some adverse effects, on balance we find that the rules' benefits far outweighed any adverse effects, particularly because the rules ended display bias and discriminatory participation requirements. However, insofar as American is suggesting that we should be cautious in adopting new rules, we agree and are therefore asking parties to comment carefully on the likely effects of the proposals discussed in this notice.

B. Consumer Deception

Although our proposed rules primarily focus on the prevention of competitive abuses by the vendors, the prohibition against display bias also appears necessary to prevent the deception of consumers. Without that prohibition, the vendors could resume distorting their displays to give preference to their own flights (and those of a few other favored carriers). Although travellers expect travel agents to give them impartial advice, display bias would cause many agents to give advice reflecting the misleading information presented by the agents' CRSs. Travellers would then have less ability to choose flights on the basis of their service features and price. Travellers would be unaware of the bias, as would be many agents, given the vendors' past efforts to create sophisticated biases not readily detectable by agents. We accordingly agree with the Board's conclusion that the prohibition against display bias is necessary to prevent deceptive practices in the sale of air transportation. NPRM at 30–31; Final Rule at 17–20.

In reaching this conclusion we find that travellers could not easily avoid the deception arising from CRS bias. Since the domestic airline industry's deregulation, consumers have increasingly used travel agencies to learn what air fares and services are available because they have no convenient alternative source of information. The constant changes in airline fares and frequent changes in route patterns have made it difficult for consumers to obtain information on airline services without expert assistance. Marketing Report at 12–13. The main alternative would be calling the airlines' own reservations staffs, who would be likely to give airline-specific advice more biased than the advice obtained from an agent using a biased CRS. Travellers would also be forced to call up each of the airlines serving their city in order to determine what other services were available. That task would be fairly burdensome. *Cf.* NPRM at 31.

To some degree, moreover, travellers cannot check the accuracy of the advice given by an agent and so cannot easily determine whether an agent's advice is biased. If a traveller finds out that a lower fare is available than that booked by the agent, the traveller often cannot be sure that the lower fare was available when the original booking was made. Given the rapid changes in fares and their availability, a particular fare available when a traveller checks may

in fact not have been available when the agent made the booking.

We recognize that more sophisticated agencies like Travel Trust could take steps to offset bias if we had no rule prohibiting display bias, *e.g.*, by reprogramming the displays furnished them by their vendors (one of our proposed rules would give agencies a greater opportunity to take such steps). We doubt that many agencies would undertake all the actions needed to offset bias. We also cannot agree with Travel Trust's belief that competition among vendors for subscribers would keep vendors from successfully marketing biased systems. The vendors were able to market such systems before display bias was proscribed, in part by hiding the degree of bias in their systems. NPRM at 16.

C. Fair Opportunity to Compete

Our bilateral agreements with other countries generally assure the carriers of each party a fair and equal opportunity to compete. We have taken the position in negotiations with foreign countries and in ruling on complaints filed under section 2(b) of the International Air Transportation Fair Competitive Practices Act ("IATFCPA"), 49 U.S.C. 1159b(b), that this provision means that U.S. carriers must have their services displayed fairly in CRSs operated abroad by foreign carriers and that U.S. carriers have the right to market their systems effectively in such countries. We accordingly held that an agreement was violated when a foreign government failed to take steps to ensure that its principal airline granted ticketing authority to subscribers using the U.S. carrier's CRS and to ensure that the foreign carrier's system fairly displayed the services of U.S. carriers. *American Airlines* v. *British Airways*, Order 88–7–42 (July 25, 1988); *see also United Air Lines* v. *Japan Air Lines*, Order 88–9–33 (September 15, 1988), vacated by Order 90–3–27 (March 13, 1990).

Foreign carriers, of course, must be given the same right in the United States to a fair opportunity to compete. To ensure that foreign carriers have that opportunity, we tentatively conclude that the rules' provisions proscribing display bias and discriminatory treatment should continue to apply to international services. This action will be consistent with the steps taken by Canada, the European Community, ECAC, and others to regulate CRS operations to ensure fair airline competition.

IV. Statutory Authority for the Rules

The Act clearly gives us the authority to adopt the proposed CRS rules. Section 411 of the Act, 19 U.S.C. 1381, authorizes us to determine whether U.S. and foreign air carriers and ticket agents are engaged in unfair or deceptive practices or unfair methods of competition in air transportation or its sale and to order them to cease such practices. Section 411, moreover, authorizes us to take preventive action before competitive abuses occur. NPRM at 20–21. The Board primarily relied upon section 411 when it adopted the CRS rules, an action affirmed by the Seventh Circuit in *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985). In addition to section 411, which authorizes rules preventing competitive abuses and deception, section 1102(a) of the Act, 49 U.S.C. 1502(a), requires us to act consistently with the United States' obligations under treaties and bilateral agreements and thus authorizes our adoption of rules on international services.

We find that our proposed rules appear necessary to prevent competitive abuses analogous, if perhaps not identical, to those proscribed by the antitrust laws, as the Board concluded when it adopted its CRS rules. The record indicates that each system controls access to most of its subscribers, that almost every airline must participate in each system in order to market its services through that system's subscribers, that all vendors have market power in several regional markets, that airline industry economics are such that foreclosure from a significant portion of the agency network can make competitive service difficult or impossible, and that the vendors have market power that could be used—and has been used—to substantially reduce airline competition.

Moreover, given our findings that each of the systems controls CRS access to most of its subscribers and that at least the larger systems have a monopoly in certain regional CRS markets, we should adopt rules preventing the vendors from abusing their monopoly power to the extent practicable. Moreover, under the monopoly leveraging principle, the antitrust laws prohibit conduct that involves unfairly using monopoly power in one market to obtain a competitive advantage in another market. This concept of monopoly leveraging is applicable to the CRSs, since each vendor has the power and incentive to use its control of a system to unfairly prejudice the competitive position of its airline rivals. *Cf.* Final Rule at 16, citing *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), cert. denied, 444 U.S. 1093.

In addition, we find that each CRS is analogous to an essential facility, since access to each is necessary for a carrier that wishes its services sold by the travel agencies using that system and since no system can be readily duplicated by another carrier. *Cf.* Final Rule at 15–16; NPRM at 30. A firm that controls an essential facility must give its competitors access to the facility on reasonable, nondiscriminatory terms. *See, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *U.S.* v. *Terminal Railroad Ass'n*, 224 U.S. 383 (1912); *Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956; *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.*, 902 F.2d 174 (2d Cir. 1990). We may accordingly adopt rules that prevent vendors from unreasonably denying other carriers access to the CRSs or from conditioning access on unreasonable terms.

While no one directly challenges our authority to adopt CRS rules, American attempts to play down the potential competitive impact of CRS practices by arguing that market power—the power to charge supracompetitive prices—exists in all industries, for perfect competition exists nowhere. American Reply at 7, n. 6. While perfect competition may not exist in other industries, the vendors' ability to distort airline competition makes this situation analogous to the type of monopoly power proscribed by the Sherman Act. Similarly, even if American were correct in stating that the vendors' market power falls short of monopoly power, Congress has authorized us to prohibit anticompetitive practices even if they have not become so serious as to violate the Sherman Act's proscription of monopolization and attempted monopolization.

The major vendors also contend that several recent court decisions have shown that there is no longer a basis for regulating the systems on competitive grounds. *See, e.g.*, United Reply at 3. We do not agree. In our view, the cited decisions—a jury verdict and rulings by the judge in an antitrust case in Los Angeles and several district court decisions on the validity of the major vendors' subscriber contracts—cannot support a conclusion that the vendors' control of the CRSs will not lead to competitive abuses, for the cases involved a limited set of issues and a narrower statute.

The Los Angeles case was a suit by several airlines against American and United that alleged that their CRS practices violated section 2 of the Sherman Antitrust Act (separate suits by Continental against United and American were settled). The jury issued

a verdict on December 15, 1989, in favor of the defendants. American and United wrongly suggest that the jury's verdict should control our decision. In fact the district judge in the Los Angeles case ruled that the jury could consider only whether the defendants had monopolized the provision of CRS services to travel agencies, not whether their CRS conduct had reduced competition in the airline industry.

The judge had held earlier that the plaintiffs could not present their claims that the defendants' conduct was unlawful under the essential facility doctrine or under a monopoly leveraging theory. "Air Passenger Computer Reservations Systems Antitrust Litigation," 694 F. Supp. 1443 (C.D. Calif. 1988). *See* App. A to NW/TWA Reply. Even if the district court correctly reasoned that the essential facility and monopoly leveraging doctrines are applicable under the Sherman Act only if the conduct of the owner of the essential facility or the monopolist presents a serious risk that such person will obtain a monopoly in a second market, our authority is broader. Section 411 provides us the authority and charges us with the responsibility to take action against abuses of market power even if they do not technically constitute antitrust violations. The Seventh Circuit so held in affirming the Board's rules, *United Air Lines* v. *CAB, supra*, 766 F.2d at 1114.

Furthermore, there are decisions by two circuits, Berkey Photo, *supra* and *Kerasotes Michigan Theatres, Inc.* v. *National Amusements, Inc.*, 854 F.2d 135 (6th Cir. 1988), holding that the monopoly leveraging doctrine may be applied where the effect on the second market falls short of threatening monopolization. The district court's decision in the Los Angeles case is contrary to these decisions.

Equally inapposite are the court rulings on the validity of the Sabre and Apollo subscriber contracts. American and United cite in particular two decisions in suits by United against former Apollo subscribers and Texas Air that sought enforcement of the restrictive clauses in the subscribers' Apollo contracts, *United Air Lines* v. *Austin Travel Corp.*, 681 F. Supp. 176 (S.D.N.Y. 1988), *aff'd*, 867 F.2d 737 (2d Cir. 1989), and In re "Apollo" Air Passenger Commuter Reservation System, MDL Dkt. No. 760 (S.D.N.Y., decided August 28, 1989). These subscribers, who had converted to System One, argued that Apollo should not be able to enforce the liquidated damages clauses in the subscription agreements because they assertedly violated the antitrust laws and were unreasonable under contract law.

The first case, Austin Travel, involved a travel agency located on Long Island which had thirteen locations and used several different CRSs (and not primarily Apollo). Some of the agency's locations used Apollo under a contract that Austin Travel wished to terminate. When United sued for damages under its liquidated damages clause, the court held the clause enforceable. In addition to holding that Apollo's clause used a reasonable measure of damages under state contract law, the court noted that other vendors used liquidated damages clauses and that the Justice Department had concluded that such clauses could be reasonable. The court held that neither United nor Apollo had a monopoly in the Long Island/New York City airline and CRS markets.

The second case, in re "Apollo", involved 18 former Apollo agencies located in different regions of the United States. The court granted United's summary judgment motion on the ground that System One, which provided the defense for the agencies as it had for Austin Travel, had failed to show that the contracts illegally restrained trade. The court again found that the liquidated damages clauses were reasonable, since they provided a means of enforcing the five-year term of the contracts, which had not been challenged as unreasonable by System One. The court further concluded that the minimum use clauses, which required agencies to make a minimum number of bookings on their Apollo terminals, were reasonable because they ensured that United would receive booking fees, the major source of United's CRS revenues, on those terminals. As for System One's claim that the contract clauses enabled United to obtain a monopoly on providing CRS services to travel agencies, the court ruled that United did not have such monopoly power. The court found, among other things, that other vendors competed for subscribers in each of the markets.

As was true of the Los Angeles case, the subscriber contract cases did not involve claims that United's CRS operations had anticompetitive consequences in the airline industry or that Apollo should be treated as having a monopoly insofar as the airlines' access to its subscribers was concerned.

In addition, Austin Travel and in re "Apollo" were decided while our rules allowed vendors to have five-year terms in their contracts with subscribers. A court could infer that the Board had concluded that a term of that length would not be anticompetitive and that enforcement of the contracts would not substantially reduce competition.

V. Procedural Issues

We have determined to use the notice-and-comment procedures established by the Administrative Procedure Act in this proceeding. The comments filed in this proceeding are voluminous. The Department's two CRS studies and the Board's earlier analysis, affirmed by the Seventh Circuit, have assisted us in examining the comments. We also have the benefit of the Justice Department's conclusions based on its own extensive investigations of CRS issues. As a result, we believe informal rulemaking procedures will produce an ample record for deciding the issues and determining what CRS rules should be adopted, even though some factual disputes exist.

We note, moreover, that the Board was not handicapped by its use of informal rulemaking procedures in its proceeding. The Seventh Circuit upheld the Board's decision to use such procedures and its denial of United's demand for a formal hearing. *United Air Lines* v. *CAB, supra*, 766 F.2d at 1119–1121.

Although American contends that a formal hearing should be held to resolve factual disputes in this proceeding, we believe that such procedures are unnecessary. As American concedes, formal hearing procedures are not required by law. American Reply at 5. While several important factual issues are disputed, we can resolve them on the basis of the parties' comments and our extensive experience with CRS issues. For example, we can dismiss American's claim that vendors do not receive incremental revenues without a formal hearing, given, *inter alia*, the vendors' own internal studies showing that such revenues exist and that the vendors expect to obtain them. Similarly, the record contains sufficient evidence of architectural bias that we see no reason to hold a formal hearing on that issue.

We have determined to place a number of documents in the docket of this proceeding so that they will be included in the record. First, we are placing a copy of the Marketing Report in the docket. The parties may comment on the report's findings in their responses to this notice. This will satisfy ASTA's request for an opportunity to comment on the report's findings.

We will place in the docket, subject to confidential treatment, certain documents obtained by us from the vendors in connection with our 1989

investigation into the competitive effects of airline marketing practices. We granted confidential treatment to these documents earlier. Order 90–2–5 (February 2, 1990). As we noted when we directed the vendors to provide the material, we might determine to make the material available to parties in rulemaking proceedings. Order 89–5–52 (May 25, 1989). Placing the documents in the docket subject to the confidentiality procedures of rule 39, 14 CFR 302.39, is consistent with that notice.

The Justice Department included with its comments a number of documents obtained from Delta, Northwest, American, Texas Air, United, and Covia Partnership in connection with several Justice Department investigations. These carriers and vendors filed motions for confidential treatment under rule 39 of the documents filed by the Justice Department. They assert that the documents contain sensitive business and financial information whose public disclosure would be competitively harmful. They accordingly ask that the documents be withheld from public disclosure. ASTA filed a reply contending that parties should have access to the documents for preparing their comments in this rulemaking.

In addition, when Texas Air, United, and Covia submitted various documents requested for our competition study concerning the litigation over Apollo's subscriber contract clauses, they filed a motion for confidential treatment of the documents. Texas Air, United, and Covia state that the documents should be kept confidential because they involve sensitive business information and their disclosure could harm the firms' competitive position.

We will grant the motions for confidential treatment, subject to reconsideration at any time for good cause shown. Counsel and outside experts may examine the confidential filings after submitting an affidavit stating that each will preserve the confidentiality of the materials and use them only in connection with this rulemaking. A pleading using confidential information must be accompanied by a rule 39 motion requesting confidential treatment.

Texas Air additionally asks that all the confidential material filed in the 1989 airline marketing practices study be made available to the parties in this proceeding. We will place a substantial amount of that information in the confidential portion of the docket for this rulemaking. However, part of the confidential information obtained for the 1989 study concerns issues not relevant here, such as frequent flyer programs, and so will not be placed in the docket.

VI. The Proposed Rules

We will discuss the major issues in the following order: (i) The scope of the rules' applicability, (ii) the use of third-party hardware and software by subscribers and their use of one terminal to access several systems, (iii) display bias, architectural bias, and related issues, (iv) booking fees, (v) marketing information, and (vi) subscriber contracts. We discuss only the more significant issues raised in the comments and our proposed changes.

A. The Rules' Applicability

The rules currently apply to air carriers and foreign air carriers that own, control, or operate CRSs in the United States and to the sale in the United States of air transportation through such systems. Section 255.2. CRSs in turn are defined as computer reservations systems used by subscribers that provide information about availability, schedules, and fares, and enable agents to book reservations and issue tickets. Subscribers are ticket agents that hold themselves out as neutral sources of information about, or tickets for, the air transportation industry. Section 255.3. Although several commentors have suggested expanding the applicability of the rules, we have tentatively determined to readopt this provision without changes.

Like the Board's rules, our rules would apply to all airline-affiliated systems used by U.S. subscribers. Our reasons for tentatively concluding that CRS regulations remain necessary are applicable to all the systems, especially since the PARS-Datas II merger has reduced the number of CRSs to four. Each of these four CRSs has a national market share of at least fifteen percent and dominates at least some regional markets. *See also* NPRM at 22.

We are not proposing to adopt the suggestion by ECAC and the European Community that the scope of the rules be broadened to include all systems whether or not they are affiliated with a carrier. No non-airline systems now operate in the United States, and, as explained above, none appears likely to enter the CRS business in the near future. In addition, the competitive problems of concern to us largely stem from the existing systems' control by airlines, who can use that control to prejudice the competitive ability of other airlines.

To ensure that systems affiliated with airlines are governed by the rules, we propose to amend the definition of "system" to include systems marketed by airlines and their affiliates.

We are unwilling to adopt the proposal by ECAC and SAS that the rules apply to systems having some but not all of the functions provided by a CRS, *e.g.*, a system that provides information but does not issue tickets. The current rules cover all of the systems affiliated with an airline in the United States, and we doubt that a service lacking one or more of the CRS functions could compete effectively for subscribers. We therefore do not now see the potential for an impact on airline competition that would provide a basis for changing the rules' coverage.

However, we recognize that the information made available to a subscriber or consumer will determine the choice of travel alternatives. If a travel decision is based on incomplete or biased information provided by a system without ticketing capability, competition could be affected even though a second system would be used to complete the travel arrangements. If commentors disagree with our tentative conclusion on the rules' coverage, they should identify the competitive harm that allegedly could occur and provide a proposed solution to the perceived problem.

We will not grant the request by Avis and Hertz that the rules apply to rental car listings. These firms allege that the CRS displays on rental cars are not always accurate or fair. However, we are not responsible for ensuring that the marketing of non-airline travel services is fair and competitive.

We will also not adopt the Orient Airlines proposal that we regulate the operation of U.S. systems in foreign countries. We assume that other countries are capable when necessary of regulating businesses operating in their territories, subject, of course, to the rights given U.S. companies by bilateral agreements and other international agreements. The Orient Airlines proposal would be inequitable unless our rules governed foreign systems competing with U.S. systems, but these carriers do not propose that we regulate overseas conduct by foreign vendors.

Finally, we plan to maintain the rules' applicability to CRSs used by agents that hold themselves out as neutral sources of information about, or of tickets for, air transportation. Our proposed rules thus would apply when systems are used by any travel agent accredited by the Airlines Reporting Corporation or a comparable organization, but would not cover systems used by corporate travel

departments or accessed by individual travellers through a home computer.

B. Definitions

We plan to readopt the definitions now contained in the rules with few changes. We will expand the definition of systems subject to the rules to include those marketed by airlines or their affiliates, as discussed above. We will also consider modifying the definition of "system vendor" due to the changes in the ownership of several systems.

The rules currently define "system vendor" as "a carrier or its affiliate that owns, controls, or operates a system," section 255.3, and generally make the rules binding on such system vendors. When the Board adopted its rules, every system was owned by a single airline, while now every system but Sabre is owned or affiliated with at least two airlines. We propose to establish a new definition, "system owners," which will include all airlines that own or are affiliated with CRS. Those carriers will be obligated to ensure that the CRS complies with the rules. "System vendor" will then mean the airline or airline affiliate that controls or operates the system.

C. Access to Third-Party Hardware and Software and Other CRSs

For the great majority of agents, the only readily usable information on airline services, fares, and availability is the information provided by their vendor through its CRS. Thus a vendor normally has some degree of control over the information seen by travel agents when they are advising customers on their travel options. To encourage CRS competition (and perhaps avoid the need for more intrusive regulation) we propose to adopt two related rules giving agencies greater access to other sources of information. One rule would allow subscribers to use their CRS equipment in conjunction with computer equipment and software supplied by third parties, unless the subscriber's use of these products would damage the CRS. The other rule would allow subscribers to use the same terminal to access any CRS, not just the system of the vendor supplying the terminal. These rules should give agencies both a greater ability to reshape the data supplied by CRS vendors so that the data better meet the agents' needs and more convenient access to additional databases.

We are aware, however, that these rules—if adopted by us and used extensively by travel agencies—could reshape the CRS business' operations and affect the impact of the other rules we are proposing. We ask the parties to comment on the possible effects of these rules, whether our other proposals should be revised as a result, and whether these proposals could have adverse effects that would make their adoption unwise.

Both proposals rely on the subscribers' increasing use of personal computers (PCs) as their CRS terminals. PCs, unlike the "dumb terminals" provided earlier by vendors, enable agencies to rearrange the information displayed in their CRS and the procedures used for checking available services and making bookings (*e.g.*, by automatically switching the agent into direct access when using direct access could better serve a customer's needs). 1988 CRS Study at 142–143; Marketing Report at 23, 95. In addition, one program has been developed that allows an agency to access any system from a single terminal.

Establishing the agencies' right to use third-party equipment and software (and to use one terminal to gain access to several systems) will be consistent with the trends in other computer service industries, as ASTA, Southwest, and others have pointed out. Networking is becoming increasingly important and widespread in other computer applications. Our proposal is also analogous to the Federal Communication Commission's rulings on telephone access; that agency, despite the importance of preserving the integrity of the telephone network, long ago prohibited telephone companies from arbitrarily limiting the third-party equipment that could be connected with the telephone system. *See, e.g.*, Carterfone, 13 FCC 2d 420, 14 FCC 2d 571 (1968).

In the CRS business today, however, the vendor supplies the equipment used by subscribers as their CRS terminals, and the subscriber's lease agreement controls the equipment's use. Vendors have used this control to deny subscribers the ability to use one system's terminals for access to any other system and to restrict the use of third-party hardware and software. Our proposed rules would eliminate the vendors' ability to unreasonably restrict their subscribers from taking advantage of technological developments to obtain better information and booking capabilities.

We tentatively believe that these proposals are desirable due to their potential benefits for airline competition, even though the vendors may have to change their usual method of doing business with travel agencies. Although travel agencies do business with the vendors in order to obtain CRS services, vendors typically cast their contractual relations with subscribers in the form of agreements to provide agencies with CRS equipment. If we adopt our proposals on third-party hardware and software, the vendors would have to recast their subscriber contracts as contracts for the provision of CRS services. As indicated, that result would be consistent with the practices in similar businesses. Parties may wish to comment, however, on whether the adoption of our proposals would present transitional problems requiring temporary rules giving vendors and subscribers time to adjust to a new and more competitive pattern of vendor-agency relationships.

1. Third-party Hardware and Software

We wish to find ways of enabling agencies to have more options on obtaining airline information through CRSs, both by increasing their ability to use different systems and other databases and by enabling them to reshape the information provided by their existing vendors. One means of achieving the latter goal is to allow subscribers to use third-party hardware (including terminals) and software with their CRSs. The current rules do not address this issue, so we are proposing a new rule that would give agencies the freedom to use such products.

Few agencies are using third-party equipment in conjunction with their CRSs. At the time of the 1988 study, two vendors barred their subscribers from using third-party equipment, and American required agencies to pay for a certification process that seemed relatively expensive. 1988 CRS Study at 142–143, but see American Reply, Jones Affidavit at 39–40. According to American, 1,000 pieces of third-party hardware are operating on the Sabre network. American Reply, Jones Affidavit at 40. However, since Sabre had over 62,000 terminals at the end of 1988, Marketing Report at 51, American's restrictions may have discouraged many Sabre subscribers from using third-party equipment. Agency use of third-party software, on the other hand, appears to be more widespread, at least for so-called "back office" or accounting programs. Marketing Report at 22.

The Justice Department suggests that a greater ability to use third-party equipment and programs could offset the competitive effects of the vendors' control of the systems. The Department alleges that a number of independent firms, including several travel agencies, are developing computer equipment and software for use in conjunction with

CRSs that will provide unbiased airline service information in ways that will be more responsive to consumer preferences than the CRS displays are now. These products could enable travel agencies and their customers to ensure that they have booked the best possible service. For example, some agencies and customers use auditing programs that check bookings to determine whether the agent obtained the lowest possible fare. The Justice Department states that one audit firm alleges that it saves its clients seven dollars for each dollar spent for auditing and estimates that half of the booking errors it catches resulted from CRS bias that deterred agents from finding the best service. The Justice Department contends that third-party hardware and software, if used more by agencies, would encourage vendors to develop less biased systems. The Justice Department believes, however, that vendors may be denying agencies the authority to use such products because they would compete with similar products sold by the vendors or would offset the CRS' bias. According to the Justice Department, several third-party suppliers have complained to it that some vendors have denied their subscribers the ability to use such products. Justice Dept. Comments at 39–41.

Several other commentors—Texas Air, Pan American, ASTA, ARTA, Hewins Travel, and Megadata—support a rule that would give travel agencies the right to link third-party equipment to their CRS and to use third-party software. ASTA and ARTA contend that vendors preclude subscribers from attaching third-party hardware by requiring expensive and unnecessary certification procedures. Megadata manufactures equipment that enables an agent to use a dumb terminal as a reservations set for both tour bookings and CRS functions. Megadata alleges that one vendor will not certify its product for use by travel agencies in conjunction with the system, even though the vendor and a large travel agency are already using the product in that way.

American and Covia claim that no rule is necessary, because they assertedly allow subscribers to use third-party equipment and software, subject only to a certification process to ensure that the subscriber's use of such products will not damage the CRS (Sabre—but not Apollo—charges for the certification procedure). Northwest and TWA also oppose any new rule in this area.

Since we find the Justice Department's arguments persuasive, we are proposing a rule prohibiting vendors from unreasonably denying subscriber requests to use third-party hardware and software in conjunction with a CRS. As discussed above, each of the vendors in our view has a monopoly on supplying airline information to its subscribers, a monopoly that gives the vendor the power to structure the system's provision of information and functions in ways that favor its own airline operations at the expense of its competitors. Third-party hardware and software could enable subscribers to offset the biases in the vendors' systems. Allowing agencies to use third-party equipment and software should also encourage vendors to improve the quality of their CRS displays and services. Unreasonable denials of agency requests to use hardware and software supplied by independent firms could well be considered an unlawful tying of equipment sales or rentals to CRS services in violation of the antitrust laws. *See Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2 (1984).

We see no legitimate justification for a vendor's refusal to allow the use of such products other than the need to prevent damage to the computer system. We suspect that the need to prevent such damage will rarely require denial of a subscriber's wish to use equipment and programs provided by a firm other than the vendor. The statements by American and Covia that they already allow subscribers to link third-party equipment and software in conjunction with their systems suggest that few third-party products will threaten to damage a system. We also note that the European Community CRS rules allow subscribers to use third-party hardware.

The contentions by American and Covia that the vendors should keep some control over the agencies' use of third-party products appear meritorious, so we propose allowing vendors to deny unreasonable requests by subscribers to use such products. We would consider a vendor's denial of such a request reasonable, however, only where the third-party hardware or software would damage the system's functioning. A vendor's denial would be unreasonable if it were based on the vendor's loss of CRS or airline revenue, and a vendor could not require unnecessary or unduly expensive certification procedures. To ensure that vendors do not abuse their right to block hardware and software that would damage a system, we will consider creating a presumption that third-party hardware and software would be compatible with the systems if commentors believe such a presumption would be useful and appropriate.

We request commentors to address the issue of whether a vendor should be allowed to charge subscribers for the cost of determining whether a third-party product is compatible with a system and, if so, whether steps could be taken that would reduce the cost to subscribers of such charges (*e.g.*, by requiring vendors to publish a list of certified equipment so that subscribers would know what products could be used without this expense).

If commentors believe that the agencies' use of third-party hardware and software would create a risk that agencies would use such products to carry out the agencies' business goals (*e.g.*, qualify for additional override payments) in situations where doing so would not serve their customers' interests, they should explain why that risk would exist, how great it would be, and whether safeguards could be adopted that would reduce the risk. At this time we doubt that the possible harmful uses of third-party hardware and software would outweigh their beneficial uses, since agencies have an incentive to provide their customers better service more efficiently. More importantly, at least some vendors already provide subscribers programs enabling them to bias their displays in favor of one or a few particular airlines. Giving agencies greater freedom to use third-party software and hardware seems unlikely to substantially increase the harm from the agencies' creation of biased displays. We also seek comments on whether the use of third-party hardware or software will inject a new bias and have little or no benefits for travel agency customers.

Two foreign carriers—Aer Lingus and Varig—complain that vendors will not allow airlines to use PCs as terminals. Since no other airline has supported this complaint, we are not proposing a rule on this issue. We will consider the issue further if parties consider it to be a significant problem.

2. Access to Multiple Systems Through One Terminal

A related rule which should further reduce the vendors' market power (and their potential to abuse it) is our proposal that vendors may not keep agencies from using a CRS terminal to gain access to more than one system. If agents had the ability to switch among systems while using one terminal, agencies would be more likely to use multiple systems. That would encourage vendors to compete more on the quality of their services and would reduce their ability to monopolize access to their subscribers. We concluded earlier that

the agencies' ability to gain access to several CRSs through one terminal should compel CRSs to compete on the basis of the quality of their service as well as their prices. 1988 CRS Study at 142.

To our knowledge no vendor will allow subscribers to use its CRS terminals as a link to a second system. As a result, agencies that want to use multiple systems have to use separate terminals for each one. One firm recently began offering a program that would let a travel agency access any system from a single PC CRS terminal. Marketing Report at 94. However, no vendor has yet agreed to allow its subscribers to use the program to gain access to other systems, "TravelPro to Take SunRise System From the Lab to the Agencies," Travel Weekly (August 20, 1990). In foreign countries U.S. vendors seem to be willing to allow agencies to use one set of terminals for access to two or more CRSs. According to Alaska, America West, and Midway, the U.S. vendors allow subscribers in Spain and several Asian countries to use one terminal to gain access to travel agency systems that were already in operation. Alaska, America West & Midway Comments at 15, citing Aviation Daily at 177 (July 28, 1989).

Southwest, Texas Air, ASTA, ARTA, and Alaska, America West, and Midway support our proposal. Southwest asserts that it would like the opportunity to consider using either an existing CRS or direct communication outside a CRS as the means of making its reservations services available to travel agencies. SW Comments at 8.

We tentatively find that subscribers should be expressly allowed to access more than one CRS from a single terminal. Since neither the current CRS rules nor industry developments have reduced the structural problems created for airline competition by airline-affiliated CRSs, the vendors continue to monopolize access to their subscribers. As a result, entry into the CRS business remains unlikely, and airlines remain unable to effectively market their services through the travel agency system unless they participate in each of the systems. Expressly allowing agencies to access different systems (or databases) from the same terminals may encourage other firms to create new databases and perhaps new reservations services.

In addition, if agencies could use a single terminal to obtain CRS services from any vendor, each vendor should become less able to use its dominance of regional airline markets to obtain dominance of the regional CRS market. That would promote airline competition. Under the CRS industry's current structure, agencies in Minneapolis, for example, apparently feel compelled to subscribe to PARS if they wish to obtain marketing benefits from Northwest on airline sales (*e.g.*, waivers of discount fare restrictions). If those agencies could use their CRS terminal for access to PARS as well as other systems, other vendors would have a better opportunity to market their services in Minneapolis, and other airlines would be less dependent on PARS for providing information on their services to travel agencies in that city.

Finally, allowing agencies to use a single terminal for access to several systems would be consistent with the Board's goal of allowing agencies to use multiple systems. *See, e.g.*, NPRM at 34–35. The vendors' restrictive contract provisions, such as the minimum use clauses, have frustrated that goal.

This proposal, if effective, could be the least regulatory means of alleviating the continuing competitive problems created by the systems. Giving agencies the ability to switch easily among systems using the same terminal would encourage vendors to compete on improving the functionality and information of each system in order to encourage subscribers to make greater use of it. It could also enable participating carriers to gain some bargaining power over booking fees by enabling them to encourage agencies to use a system with the lowest booking fees. If so, that would limit booking fees, which are otherwise unrestrained by market forces. This proposal could also reduce each vendor's competitive advantage in controlling the data created by its CRS, since its system would no longer make all bookings at many agencies.

We recognize, however, that agencies tend to use only a single system now for practical reasons, such as the difficulties of keeping track of the location of client records and training agents to use different systems. *See, e.g.*, Marketing Report at 87. Many agencies may also not wish to use multiple systems if the vendors' charge make using multiple systems relatively costly.

We believe nonetheless that agents are much more likely to use multiple systems if they can use the same terminal for access to different systems, especially since software is being developed that makes it easier for agents to use multiple CRSs.

To make this proposal effective, we must also prohibit minimum use clauses in subscriber contracts and other contractual provisions that directly or indirectly could keep a subscriber from using third-party equipment and software or from using one vendor's terminal as a link to another system.

We may also need to consider whether each vendor should be required to provide CRS services to agents already subscribing to other CRSs, subject to commercially reasonable terms. Commentors who believe that vendors may be unwilling to provide such services should suggest rules that would encourage or require vendors to permit agencies to subscribe to their systems while using a terminal supplied by another vendor (or a third-party supplier).

If agencies use terminals supplied by independent firms, a vendor would seem to have no legitimate economic or legal basis for limiting an agency's use of a terminal not supplied by the vendor to access other systems. Although we doubt that vendors should be able to keep subscribers from using vendor-supplied equipment to link up with other systems, vendors may have a reasonable basis for so limiting the use of the equipment supplied by them. Commentors should address this issue.

Our proposal would presumably cause major changes in the vendors' methods of obtaining compensation for use of the systems and in their incentives for obtaining subscribers, since a subscriber's charges typically do not vary according to the number (or type) of transactions made on a system. The vendors may decide that it would be economically more efficient to charge subscribers on a transactional basis or according to the length of time that an agent is using the vendor's system, if subscribers can switch between systems from one terminal. In addition, vendors may become uninterested in providing hardware to their subscribers if subscribers can use their terminals to access other databases. Such a result does not appear troublesome, since subscribers should be able to obtain hardware easily from other suppliers and since firms providing other types of databases often do not provide the terminals used to access their databases.

All significant potential effects of this proposal should be discussed by commentors. Commentors should also address whether other changes should be made in the rules to accommodate the vendors' possible need to change their operations.

The only opposition to the proposal comes from American. That vendor argues that allowing agencies to gain access to multiple systems would preclude vendors from recovering their investment in hardware by eliminating the assurance that they would obtain

the booking fees anticipated from their subscribers' use of their CRSs. At this time we doubt that American's concern is well founded. The agencies' ability to access several systems from one terminal would not keep vendors from recovering their investment; for example, if a vendor supplies the terminal, it should be able to obtain lease payments for the subscriber's use of the equipment. Furthermore, a vendor whose CRS services are more attractive to an agent could expect to obtain more booking fees as agencies would use its system more. In addition, some portion of the booking fees represents monopoly rents, and a potential means of ending competitive abuses should not be abandoned because it will prevent the collection of such rents.

D. Vendor Participation in Other Systems

A related question is whether vendors should be required to participate in other systems. The rules now contain no such requirement and, as discussed above, under the current industry structure no carrier is likely to end its participation in other systems because doing so (*e.g.*, would end its access to the travel agencies subscribing to that system. Nonetheless, several commentors charge that vendors have reduced the level of their participation in other systems in order to handicap the ability of other systems to compete for subscribers. ARTA, for example, alleges that some vendors make their complete inventory of discount seats available only in the vendor's own CRS, that United allows only Apollo to make advance seat assignments and issue boarding passes for United passengers, and that Northwest does not participate in some enhancements in other CRSs as a means of encouraging Minneapolis-St. Paul and Memphis agencies to become PARS subscribers. ARTA Comments at 7, 10. American similarly claims that Northwest downgraded its participation in Sabre's direct access program in order to force agencies at Northwest hubs to become PARS subscribers. American Comments at 17–18. While Texas Air contends that we need not now require vendors to participate in competing systems, American, Northwest, TWA, and ARTA assert that such a requirement should be imposed.

We have tentatively decided that each vendor should be required to participate in other CRSs and their enhancements, unless the vendor has valid commercial reasons for not doing so *e.g.*, because the price of an enhancement is not worth the value of the service). If we adopt this proposal, we would presume that the vendor's participation would be commercially reasonable if the fee for the service is no higher than the vendor's own fee for similar service or if the vendor is paying the same fee to another CRS for such service. This requirement appears justified on competitive grounds, since it would prevent a CRS owner from using its dominance of a regional airline market as a tool for obtaining dominance in the area's CRS market. Since travel agents desire, for example, the ability to issue boarding passes and to obtain last seat availability information through direct access, this requirement must cover more than participation in a system's basic functions if it is to be effective.

This requirement would also be consistent with our decisions on complaints by U.S. airlines that they have been denied a fair and equal opportunity to compete in a foreign country when the dominant carrier in that country has denied subscribers using the U.S. carrier's system the authority to use it to issue tickets. *American Airlines* v. *British Airways*, Order 88–7–11 (July 8, 1988).

Three of the four U.S. systems are now owned by or affiliated with at least two airlines, and seven airlines own Apollo. Our proposed rule would impose the duty of participation on all airlines that own or are affiliated with a system, as Northwest and TWA have proposed. If commentors believe the reach of the duty should be narrowed, they should explain why and suggest a way of doing so.

Northwest and TWA urge us also to require vendors to make all their publicly-available schedules and fares (as opposed to fares available only to certain customer or agencies) available in each system, so that no vendor could reserve for its own system services which can be sold to the public. NW/TWA Comments at 33–34. We believe such a rule should be adopted if, as we tentatively find, each vendor should be required to participate in every system.

We recognize that this proposal would infringe on each vendor's current ability to choose which services it wishes to buy from other vendors. While we believe that this infringement is outweighed by the need to keep a vendor from using its dominance of regional airline markets as a tool for obtaining dominance of the CRS market in the same regions, we invite commentors who believe the contrary to explain why in their comments. We also ask all commentors on this issue to discuss this proposal's likely impact on the vendors' costs.

E. Display Bias

We propose to maintain the rule prohibiting systems from editing or ordering their displays on the basis of carrier identity. The Board found that rule necessary, because display bias represented an abuse of the vendors' market power and led to consumer deception. Because travel agents are busy, they usually booked a flight from the first screen of the display and often booked the first flight displayed. The vendors used display bias to improve the position of their flights in the display, whether or not their flights best met the traveller's schedule and fare requirements.

As a result, travel agents often booked consumers on less suitable flights because the best flight was in a lower position on the first screen or was on a later screen. Final Rule at 17–19.

We see no indication that this prohibition against display bias has become unnecessary. Although the industry's experience with the rules has shown that display bias was not the only cause of incremental revenues, it nonetheless was a significant cause. 1988 CRS Study at App. III. As the Justice Department points out, the vendors' internal documents demonstrate their continuing belief that a flight's position on the display does affect the likelihood that agents will book a flight and that the vendors can increase their bookings by manipulating their criteria for ranking and editing flights. *See, e.g.*, Justice Dept. Comments, App. at 82. If we did not prohibit display bias, the vendors would likely resume the practice to prejudice their airline competitors.

Several commentors have asked that the display rules in Part 255 be expanded, either because the vendors have abused their use of allegedly neutral display criteria or because certain criteria are deceptive and should be proscribed. We have tentatively decided to prohibit the listing of change-of-gauge flights as "direct" flights without notice that a change in aircraft is required. We will also codify the vendors' agreement not to use biased secondary displays. We are proposing these changes to limit deception and to reduce the possibility of competitive abuses by the vendors. The other requested changes to the rules appear unnecessary or unworkable and therefore are not included in our proposed rules. Parties may comment further on proposals to bar the use of an on-line preference, even though we are not proposing such a rule here, because

this issue may warrant further discussion.

Since the vendors' ability to provide an accurate and fair display of airline services depends on the accuracy and completeness of the information provided by participating carriers, we propose to create a requirement that carriers are obligated to provide correct and complete service information to the vendors, whether the information is provided directly or through another firm, such as the Official Airline Guide.

1. *Prescribed Algorithm.* The rules now prohibit vendors from using factors directly or indirectly related to carrier identity in ordering the flights contained in the primary display. Vendors are otherwise free to choose the criteria used in ranking flights (the rules for ordering the flight display are called the "algorithm"). Several commentors, primarily foreign airlines and ECAC and the European Community, complain that vendors have used algorithms as tools to give their own flights a better position in the display by using ranking criteria and editing criteria that prejudice the display position of their competitors' flights.

We recognize that the vendors may choose seemingly neutral display criteria that improve the position of their flights in the display. *See* Justice Dept. Comments at 17. However, similar services by their competitors would receive the same benefit. We are accordingly unwilling to prescribe a CRS algorithm that all vendors must use. Allowing the vendors to continue choosing the ranking criteria seems unlikely to create substantial competitive disadvantages for other carriers. We believe that allowing vendors to construct their own algorithms will enable them to respond to changing consumer and subscriber demands for information.

Moreover, we are not convinced that there is a single best way for displaying airline services. If we were to require use of the European Community algorithm, for example, we would be deciding in effect that all single-plane services, regardless of their travel time or number of stops, were better than any connecting service and so should always be listed first. The Orient Airlines' claim that the vendors' choice of default times limits the travel agents' ability to find the best transpacific services (Orient Airlines Comment at 34), even if it might have some merit in that market if a travel agent does not specify a departure time, is an example of the type of issue that we would have to address were we to prescribe a standard algorithm. As the Justice Department points out, it would be inefficient for us to attempt to devise an algorithm. Justice Dept. Comments at 38–39.

The parties' comments do not show that the vendors' current freedom to choose non-carrier specific criteria is causing substantial competitive harm (except in the areas covered by our proposed rules). *See* Justice Dept. Comments at 39. Several commentors have provided examples of U.S. vendor displays where the "best" service appeared several screens after the first screen and behind service that was obviously inferior. *See, e.g.,* Iberia Comments at 5–6, stating that Sabre's display of Boston-Madrid service begins with connecting service over San Juan because American has a hub at San Juan. We believe these examples are isolated instances; they do not convince us that pervasive regulation of algorithms is necessary. Many of these examples result in part from the failure to specify a departure time, which causes the system to use its early morning default time as the starting point for constructing the display. [5] However, in the highly competitive agency business, an agent could not afford to recommend such an inconvenient routing to a client.

We understand, however, the dissatisfaction of several foreign commentors with the vendors' use of ranking and editing factors that result in the placement of foreign carrier flights later in the display than they believe is warranted by the flights' service characteristics. Although we do not wish to prescribe a standard algorithm, we believe that our proposed clarification of the connect point rule, discussed below, should eliminate many of the worst examples.

2. *On-Line Preference.* We tentatively find that we should not bar use of the on-line preference. Although a number of commentors assert that it overstates the benefits of on-line service in a way that can mislead consumers and injure competition, we tentatively find that the display preference is consistent with the travelling public's desire to use on-line services when reasonably convenient.

The preference gives on-line connections an edge over interline connections in CRS displays, either by arbitrarily assigning penalty points to interline service or by placing all on-line connections in a category higher than all interline connections. All systems but Sabre and Datas II have such a preference; Sabre stopped using an on-line preference when American settled its CRS dispute with British Airways. *See* Order 88–12–35 at 3 (December 15, 1988).

The display preference given on-line connections in most systems causes them to be displayed before interline connections more often than would otherwise be the case. Even without the preference, on-line connections will ordinarily receive a better display position than interline connections since they have an inherent advantage in those CRSs using elapsed time to rank connecting service. On-line connections require less time than interline connections for two reasons. First, the carrier operating the flights will coordinate the schedules so that the departing flight leaves relatively soon after the incoming flight arrives. Secondly, the minimum connecting time for on-line connections is likely to be less than for interline connections.

On-line connections generally provide other benefits than shorter travel time, however. Travellers believe that interline connections create a greater risk of lost baggage and that using an on-line connection may cause the airline to hold the second flight if the first flight's arrival at the connecting point is delayed.

Travellers clearly prefer on-line service as a general rule. The use of a display preference by most vendors thus enables travel agents to find the service preferred by most travellers more quickly. We recognize that the on-line preference has led to repeated complaints from foreign governments and carriers about its alleged unfairness and its discriminatory effect on foreign carriers, since they must rely on interline connections from U.S. carriers to obtain feed traffic from points beyond their U.S. gateways. Despite this, we cannot agree that the preference inherently discriminates against foreign carriers, since many operate their own hub-and-spoke systems at major cities in their home countries. As a result of these factors, given our usual reluctance to prescribe display algorithm, we have tentatively decided not to prohibit vendors from using an on-line preference if they wish.

Commentors may discuss the issue further, however, and we may adopt a

[5] The Orient Airlines set forth a series of CRS displays in their supplemental comments allegedly showing that the U.S. CRSs frequently give foreign flights a poor display position. However, the validity of the analysis is unclear. First, many of the cited examples appear to provide a good display position for inferior service because the request did not specify a departure time. Although the Orient Airlines assert in some cases that a desirable flight operated by an Asian carrier was omitted, they do not describe that flight and thus prevent us from accepting this assertion. The comments also do not explain why the vendors' rules caused the Orient Airlines flights to be displayed poorly or to be omitted or why the dates used in their study were selected.

rule limiting or eliminating the preference's use at the end of this proceeding, since it is troublesome in some respects. Prohibiting the on-line preference would remove a major irritant in our aviation relations with other countries, and we doubt that such action would have a significant competitive effect on U.S. carriers. In addition, the usual time advantages of on-line service should cause it to receive a better display position than interline service even if vendors did not use an additional preference. PARS, moreover, apparently gives an equal ranking to on-line connections involving a change of airports and interline connections at the same airport, even though few travellers would prefer to travel from one airport to another in order to stay on the same airline. Orient Airlines Comments, App. C at 3. Prohibiting the on-line preference should not handicap travellers seeking such service because of other advantages (*e.g.*, the decreased risk of lost baggage), since travel agents can probably find on-line connections with little trouble because both flights will carry the same airline code. The on-line preference may also unduly strengthen the vendor carriers' competitive position against smaller U.S. carriers, since the vendors have nationwide route systems with several hubs that enable them to offer on-line service to points throughout the nation. Smaller carriers, on the other hand, cannot match that service since they have few hubs and often operate only in one region.

The on-line preference has also created an incentive for codesharing arrangements, whereby the services of one carrier are displayed in CRSs under another carrier's code. Code-sharing originally involved arrangements between jet carriers and commuter carriers. In recent years U.S. carriers have entered into codesharing arrangements with foreign carriers as well. The preference encourages such arrangements, because a connection between carriers sharing the same code will be treated as an online connection in all systems but Sabre and Datas II. Apollo, moreover, gives connections between carriers having a joint marketing arrangement a higher placement than interline connections between carriers without such an agreement, even if the parties to the agreement do not share the same code. Orient Airlines Comment, App. B at 2–3. Code-sharing has been controversial, for without adequate notice to the public it can mislead consumers as to which carrier will actually be providing the service. While we have substantially reduced the risk of deception by adopting a policy statement requiring the disclosure of the carrier actually operating a flight, 14 C.F.R. 399.88, some possibility for deception may still remain. In addition, the widespread use of code-sharing and related joint marketing arrangements has helped reduce independent commuter carrier operations, although the arrangements have generally improved service to smaller communities.

3. *Change of Gauge Flights.* Some carriers operate "change of gauge" flights which require passengers to transfer from one aircraft to another at a stop before the final destination; these flights use the same flight number for the entire journey, and the second aircraft must be held for the arrival of the first aircraft, except in unusual circumstances. These flights are typically displayed on CRSs as direct flights involving one or more stops, but the change in aircraft is not always disclosed. To avoid deception we will amend the CRS rules to require that CRS displays give notice of the change in aircraft. This requirement will be consistent with our existing enforcement policy on the display of change of gauge flights. *See Aerlinte Eireann* v. *Delta Air Lines et al.*, Order 89–1–31 (January 19, 1989). If parties believe that the kind of notice provided now by the vendors should be improved, they may discuss the matter in their comments.

Although ECAC, British Airways, Iberia, and the Orient Airlines contend that change of gauge flights should be treated as connections for all purposes, the differences between change of gauge flights and regular connecting service would support a difference in their treatment in CRS displays. We accordingly are not proposing to require change of gauge flights to be treated as connecting flights for display purposes, although vendors are free to do so if they wish.

4. *Padded Displays.* Several commentors have urged us to prevent excessive exposure being given to the same travel option in CRS displays. They argue that "screen padding" (listing the same flight or connecting service under different flight numbers or carrier identification codes) results not only in competitors' flights being placed in lower display positions but also makes it less likely that consumers will receive complete information on available airline services.

We have tentatively decided not to propose a rule in this area. In competing for subscribers, vendors have an incentive to provide information in a form that does not frustrate subscriber efforts to obtain information. We believe this incentive should be adequate protection against their allowing multiple listings of the same service to crowd out other services. Nevertheless, if commentors continue to believe that this issue needs to be addressed further, they should identify the problems of concern to them and propose a solution.

5. *False Flight Characteristics.* The Orient Airlines complain that some vendors ascribe inaccurate operational or service characteristics to a flight in order to improve its display position (*e.g.*, by assigning an unrealistically short flying time to a flight). We would be willing to consider a rule prohibiting this practice if commentors consider it a widespread problem and can suggest a workable means of enforcing such a rule. We are reluctant to propose a prohibition now in part because we foresee difficulties in defining, for example, how often a carrier must fail to meet a flight's schedule in order to make the schedule a violation of the rule. Our decision not to adopt such a rule would not legalize a vendor's use of false or inaccurate information in listing its flight, since such a practice would be a deceptive practice and unfair method of competition.

6. *Ban on Elapsed Time.* American asks that we prohibit the use of elapsed time as a ranking factor because carriers may have an incentive to use unrealistically short flight times for CRS purposes in order to improve the display position of their flights in systems using elapsed time. American notes the existence of a controversy on this issue several years ago. (That controversy began when Delta filed a complaint alleging that American used unrealistic schedule times for CRS purposes but not for internal operational purposes, Marketing Report at 83.)

We see no need to take such action. The vendors agreed not to use elapsed time as a factor in ranking nonstop flights, because using elapsed time encouraged carriers to submit unrealistic flight schedules to CRS vendors in order to improve the flights' display position. However, the measures adopted in our elapsed time rulemaking also appear to have solved the problem of schedule shaving for CRS purposes, so we see no need to codify these agreements. (The rulemaking notice and final rule were published at 52 FR 22046 (June 10, 1987) and 52 FR 34056 (September 9, 1987.))

In contrast, the use of elapsed time for ranking connecting flights does not seem to have encouraged a significant degree of unrealistic scheduling, in part because the systems use the standard airport minimum connect times in

constructing their displays. Moreover, our adoption of a rule requiring vendors to disclose on-time arrival data, § 255.4(e), and the wider public concern with each carrier's on-time performance in recent years make it less likely that carriers will begin using false flight times to improve their display position. Elapsed time can also be an important factor in choosing among multistop direct service and connecting services. We are therefore unwilling to prohibit the use of elapsed time in ranking multistop and connecting services.[6]

Although American contends a ban on elapsed time would benefit the public, an American document submitted by the Justice Department suggests it would also favor American in CRS displays. That document—an internal study by American—showed that American benefited when Sabre stopped using elapsed time in its algorithm. Justice Dept. Comments, App. at 79–93.

7. *Separate Algorithm for International Services.* American and the European Community ask that we allow vendors to use different algorithms for domestic and international services, a request that would require amending the rules' current requirement that the same algorithm be used in all markets. The Board adopted that requirement to prevent vendors from varying "their display criteria market-by-market to maximize the sales on their flights and continue the very harm this rulemaking was meant to address," Final Rule at 25.

When KLM suggested in the Board rulemaking that different algorithms be permitted for international services, the Board declined to allow vendors to use different factors for international service, since "there is not evidence enough yet to justify a departure from our general rules that might afford an opportunity for reintroducing carrier preference," Final Rule at 25. When we considered this issue in 1988 in connection with American's proposal to create a different algorithm for international markets as required by its first settlement agreement with British Airways, we held that American had not shown that a difference in treatment was warranted. Order 88–9–51 at 8–10 (September 23, 1988).

In our view, American has again failed to demonstrate that different treatment is justified for international services. We are willing to exempt vendors from the requirement that the same algorithm be used in all markets to a limited extent so that a vendor may use a modified algorithm for displaying international services, *see, e.g.*, Order 90–8–32 (August 14, 1990), but we are not convinced that we should give vendors blanket authority to establish a different algorithm for international services. *See* Order 90–11–55 (November 28, 1990). Commentors, however, may address this issue further.

8. *Publication of Display Criteria.* The rules now require each vendor on request to provide any person its current criteria for ordering flights in the primary display and the weight given each criterion, § 255.4(b) (2). The Board adopted that requirement to make the display bias prohibition more effective and enforceable. NPRM at 33. Northwest, TWA, and the Orient Airlines contend that the vendors' obligations should be substantially increased. While we are not proposing most of their suggested changes, commentors may discuss the issue further in their responses to this notice.

Northwest, TWA, and the Orient Airlines contend that vendors should be required to give advance notice of changes to their algorithms; the Orient Airlines further assert that any changes should be subject to public comment. Northwest and TWA contend that advance notice will give participating carriers an opportunity to adjust their own flight schedules so that the vendor's changes will not injure their display position, while the Orient Airlines believe that vendors are likely to make changes to prejudice their competitors' position in the CRS display.

We are not proposing these changes, since the vendors' algorithms, albeit tailored to suit the characteristics of each vendor's airline operations, do not appear to be causing significant competitive harm, except for the areas where we have tentatively determined to make changes in the rules. Furthermore, we have not seen evidence that vendors have made significant changes in their display logic since the rules took effect, except those necessitated by the Sabre and Worldspan settlement agreements with British Airways and Iberia, and we do not see a significant threat of major harm in the future.

Northwest and TWA, however, also ask that the rule be amended to require vendors to provide the instructions used by programmers to create the algorithm. We have included such a requirement in our proposed rules, given the apparent discontent with the lack of specificity in some vendors' publication of their display criteria.

The Orient Airlines similarly charge that some vendors violate our rules by providing information that is assertedly too sparse to enable a carrier to understand how they construct their displays. We believe that this issue, like several others, involves in large part ensuring that participating carriers receive the CRS service from the vendors to which they are entitled, assuming that the proposal by Northwest and TWA, if adopted, would not solve this problem. Rather than further modify the rules to alleviate the Orient Airlines' complaint to the extent it may be justified, we propose to require vendors to include the existing requirement in their contracts with participating carriers, since this right is one of the rights that such carriers are entitled to in return for paying booking fees. The requirement could then be enforced in a contract suit.

9. *Biased Secondary Displays.* The rules now require each vendor to provide a primary display consisting of an integrated display conforming to our display rules that is at least as easy to use as any other display. The rules do not bar vendors from offering subscribers other integrated displays or from biasing such displays. Shortly after the rules took effect, several vendors introduced secondary displays that were equivalent to the biased displays outlawed by the new rules, and travel agencies were given the ability to force their agents to use these biased secondary displays. These practices became controversial and ended after each of the vendors voluntarily agreed with us that it would no longer offer such secondary displays or give agency owners the power to require their agents to use the biased secondary display. Marketing Report at 82.

Since biased integrated secondary displays constructed by the vendor could recreate the injuries that our display bias rule seeks to end, we propose to prohibit them.

10. *Travel Agency Displays.* Using PCs as CRS terminals enables subscribers to change their CRS displays. Several agencies have revised their displays to give a display preference to the airlines preferred by the agency customer or by the agency itself and sometimes to eliminate the flights of other airlines. Marketing Report at 22–23. Some agencies appear to use their own programs to create such displays, and at least one vendor,

[6] The vendors made two agreements with us, one limiting their use of elapsed time, the other ending the use of biased secondary displays. While we plan to incorporate the latter agreement into the new CRS rules, we have tentatively decided that such action would not be appropriate for the elapsed time agreement. The unrealistic scheduling practices that led to that agreement seemingly have ended at least in part because of other action taken by us.

Apollo, supplies a program—Travel Screen—that enables agencies to achieve the same goal.[7] In addition, Sabre provides agencies the capability of obtaining displays showing the flights of only one carrier for carriers willing to pay a ten-cent premium on all their bookings for this service. If agencies have a greater ability to use third-party hardware and software, as provided by our proposed rules, more agencies are likely to modify displays, and some may do so to create displays biased in favor of one or a few airlines.

Varig asks that we prohibit travel agencies from creating biased displays, while Aer Lingus urges us to prohibit agencies from creating such displays by using software provided by the vendor. Northwest and TWA propose allowing such displays only when the agent requests such a display for a particular transaction (without such a request the integrated display would automatically appear). ECAC and the European Community suggest that the rules expressly permit agencies to use special displays, but only at a customer's request. Covia defends the agencies' use of programs that enable them to create custom displays. Covia Reply, Powers Affidavit at 17.

To the extent that travel agencies create biased displays in response to customer preferences (*e.g.*, when a corporate customer has negotiated special fares from an airline), the use of biased displays does not appear to be inherently deceptive or anticompetitive since it stems from the customer's own decision. Where the customer participates in the choice of carrier, there is little danger of deception. From a competitive standpoint each airline should be able to compete to be the customer's preferred airline.

However, to the extent that travel agencies use such displays for their own purposes (*e.g.*, to implement override commission programs) without notice to the customer, this practice is more troubling, for travel agencies hold themselves out to the public as impartial providers of travel advice. Moreover, an agency's decision to create displays that eliminate or hide information from its agents—and thus from its customers—appears to create a risk of deception similar to the deception created by a vendor's display bias. Nonetheless, this practice's competitive effects may not equal those of the vendors' biased displays, since at least theoretically other airlines may have an ability comparable to the vendor's to influence the agency's design of the display.

We are reluctant at this point to generally regulate the manner in which agencies select airline service for their customers, and we are not proposing any rule on this issue. However, parties may comment on whether there are potential competitive and deception concerns raised by agency creation of biased displays that should be alleviated. In addition, we are asking for comment on whether travel agencies should be required to notify their customers of their CRS affiliations and any use of a biased display created by the agency without a customer's request for the display. Such a notice requirement could substantially reduce the risk of deception caused when an agency uses a biased display for its purposes.

11. *Connecting Points.* Given the reliance of all major airlines on hub-and-spoke operations, the Board found it essential to adopt rules on the display of connecting services. An airline cannot compete effectively for agency bookings if its connections are not adequately displayed in CRSs. A CRS's omission of a carrier's hub as a connect point, for example, would eliminate all of that carrier's connections over the hub from the display. The Board accordingly adopted two requirements. First, vendors could not use factors related to carrier identity in editing or displaying connecting flights or in choosing connect points. Second, vendors must use at least nine connect points for each city pair in constructing connections for display, since the Board feared that vendors otherwise would eliminate their competitors' on-line connections by not using their hubs as possible connect points. ER–1395, 49 FR 44451 (November 7, 1984). The Board believed that requiring nine connect points would provide participating airlines an adequate opportunity to have their hubs included as connecting points.

The vendors' treatment of connecting service has created substantial dissatisfaction, even though all systems can now use more than nine hubs for each market. Despite the rules' fundamental requirement that the vendors may not give their own connecting service and hubs preferential treatment, American at least seems to be applying different standards to its hubs and the hubs of participating carriers. Sabre includes all of American's hubs as connect points but limits the number of hubs included at the request of participating carriers. (American tries to justify this distinction on the basis that Sabre also functions as American's internal reservations system.) In addition, although Sabre automatically includes all American hubs, it does not use participating carrier hubs unless their use is published in an industry source like the "Official Airline Guide" or is requested by the carrier, with a limit of three connect points per city pair. American Reply, Jones Affidavit at 33.[8]

According to Northwest and TWA, vendors often must limit the number of connect points, but in doing so certain vendors allegedly keep more of their own points than they do points of participating carriers (as noted, American admits doing this). Texas Air contends that vendors typically allow participating carriers to choose no more than four connect points (and sometimes only two) for a city pair and that Sabre, for example, also requires participating carriers to pay for the listing of a connect point in the "Official Airline Guide" or comparable source before Sabre will use the point. Texas Air Comments, Lenza Affidavit at 21. Thus, although Continental provides Boston-Los Angeles connecting service over Cleveland, Houston, Denver, and Newark, such practices as the numerical limit keep it from designating all four points as connect points for the market in some CRSs. *Ibid.*

The Orient Airlines similarly complain that vendors unreasonably burden participating carriers by requiring unnecessary procedures for carrier requests for the inclusion of connect points in CRS displays. Orient Airlines Comments at 38. They also allege, as does Aer Lingus, that vendors abuse their discretion in choosing connect points and double connect points. Delta urges us to require each system to use fifteen single connect points and six double connect points in each market and to make the prohibition against discrimination expressly applicable to double connect points and to the choice of points above the minimum required by the rules.

We have determined that modifications to the connect point rule appear desirable. We plan to revise the rule requiring a minimum number of connect points as Delta requests, since each CRS appears able to use a greater number of connect points than the minimum now required. Increasing the

[7] In its reply comment, Texas Air asserts that Travel Screen is designed to enable Apollo subscribers to bias their displays in favor of United. While agencies can use the program to give United flights a display preference, the program seems to allow agencies to create displays favoring any carrier whose services are preferred by a specific client or the agency. Covia Reply, Power Affidavit at 17. However, most Apollo agencies receive override commissions from United. Lenza Supp. Affidavit at 32–33. Texas Air Reply.

[8] Covia, on the other hand, alleges that Apollo does not treat United's connecting points differently from those of other carriers. Covia Reply, Powers Affidavit at 16.

minimum number of points should limit the vendors' ability to exclude points requested by participating carriers. Since each CRS can meet this requirement now, it should cause no hardship for the vendors (the Board's rule, in contrast, compelled some systems to create capabilities that they had not had before).

In addition, we will reaffirm the vendors' existing duty to choose connect points without discrimination. That duty will apply to double connects and to whatever number of points the vendor chooses to use. If a vendor chooses to use all of its own hubs as connect points, it must also include every hub of every participating carrier as well. If a point requested by a participating carrier satisfies the vendor's edit criteria better than one of the owner's hubs already included in the display, the vendor must include the participating carrier's request, even if doing so compels the deletion of the owner's point. The same edit rules, moreover, must be used in every market.

We tentatively find that vendors should also be barred from imposing unnecessary and burdensome procedures on requests for the inclusion of connect points. Thus, for example, a vendor that lists connect points for participating carriers only when they are published in the "Official Airline Guide" may list its own points only if they meet that publication requirement. The vendors' current requirements can be burdensome; one carrier has estimated that the OAG publication requirement imposed by one vendor costs it $200,000 annually. Justice Dept. Comments, App. at 12.

The comments filed by Northwest and TWA raise another issue of past compliance with our rules. Section 255.4(c)(3) requires vendors to provide any person on request current information on all connecting points used in each market, the criteria used for choosing connect points, the criteria used in editing connecting flights, and the weight given each criterion. Northwest and TWA assert, however, that the rules should require vendors to disclose which connect points are actually used in any city-pair market and suggest that we should adopt the terms of the settlement agreement between Northwest and United, which requires Covia to allow carriers to view the connect point table in Apollo. NW/TWA Comments at 15. We believe the rules already require vendors to disclose such information. If parties believe that the rule has been ineffective, they should suggest an alternative that would be effective.

The Orient Airlines also complain about the vendors' editing processes which assertedly eliminate flights that are not significantly inferior to other flights included in the display. These carriers are concerned because the edit process means that some flights are not shown at all in the display, whereas biased displays used before the rules took effect primarily (but not entirely) caused flights to be listed in a poorer position in the display. We are not proposing a new rule on this since the rules already require vendors to use nondiscriminatory rules in the editing process, but we invite further comment on this issue.

F. Travel Agent Notice to Customers

Because CRSs allow travel agents to obtain information and make bookings on the vendor carrier more easily and more reliably than on other carriers, and because of the other effects of an agency's CRS affiliation, consumers sometimes choose a flight or fare that is not the best available, because the travel agent has not informed the traveller of all the travel options available. If consumers knew that their agency's CRS was affiliated with a particular airline and that the affiliation could affect the information provided by their travel agents, consumers would receive knowledge that might offset in part the effects of CRSs in influencing agent recommendations.

As a general principle, the most desirable means of offsetting supplier practices that can create deception and limit consumer knowledge of the choices available would be a rule increasing the amount of information given the consumer. CRS vendors appear to obtain additional travel agency bookings through such practices as discouraging agents from taking the additional steps needed to obtain last seat availability information on airlines other than the vendor. It appears possible that agencies would be more inclined to obtain CRSs with more equal functionality (or to subscribe to several different systems) if consumers knew that CRS ties can affect the quality of the information provided by an agency and became inclined to use agencies that provided the best possible information, either by using a system with the best functionality for bookings on non-vendor carriers or by using several different systems.

We invite parties to comment further on whether a notice requirement could be created that would be practicable and effective. Both the apparent disadvantages and advantages of a notice requirement should be discussed by those commentors who believe it would be worthwhile. No commentor has suggested that such a notice requirement could alleviate the competitive and deception concerns presented by CRSs. Nonetheless, such a notice requirement, if practicable and effective, could be a means of offsetting the effects of CRSs while avoiding other regulations that could be more intrusive.

As discussed earlier, some commentors are troubled that travel agencies have reprogrammed the displays provided by their vendors so that a preference is given certain favored carriers or that all carriers but those favored by the agency are eliminated from the display. Such reprogramming would not be of concern when the display modifications reflect the wishes of the client. They are of concern, however, when they result from the agency's desire to book on favored carriers in order to increase its incentive commissions or to otherwise benefit its own business. We invite parties to comment on whether agents should be required to give notice that they use a biased display when the bias does not stem from the customer's carrier preferences.

We recognize that override commissions also affect travel agent recommendations, because they encourage agents to recommend the services of the carrier that pays them an incentive commission, possibly even if another carrier's service better meets the traveller's needs. *See* Marketing Report at 26–30. However, we are not asking parties to comment here on the effect of override commissions or on whether notice of them should be given consumers, as the effect of such incentive commissions raises issues that are separate from the CRS issues on which we are focusing in this rulemaking.

G. Equal Functionality

1. *The Problem.* The current rules regulate in only limited ways the functions that systems provide to participants and the terms under which such functions are offered. They require vendors to offer basic CRS services (displaying schedules and fares, showing availability, making bookings, and issuing tickets) to all carriers on nondiscriminatory terms, but do not explicitly require that such services be identical in ease of operation or in reliability to those provided for the vendor carrier. The rules require vendors to apply the same standards of care and timeliness to loading information (including availability) about participants as they apply to their own information, but the rules do not

impose a strict rule of equal treatment of the owners' and participants' information. The Board noted in promulgating the information loading provision that the CRS operator could, consistently with the rule, receive and input more frequent updates of the information about the owner's flights, fares and availability than was true for participants. NPRM at 46–4. Finally, the rules allow vendors to reserve for the marketing of their own services any enhancements beyond the system's basic functions. While these issues have been treated separately in the past, they are in many respects simply different aspects of the basic functionality issue.

The Board decided against more extensive regulation (*e.g.*, requiring vendors to make all enhancements available to participants, NPRM at 55) for several reasons. First, as in other areas, the Board was loath to intervene unless action was clearly called for. The functionality issues mentioned above did not present as clear a picture of anticompetitive conduct as did the other practices covered by the rules. The Board was also concerned about balancing the possible benefits to airline competition from a proposed restriction against the likely infringement on vendors' "private interests * * * in legitimately reaping the rewards for their enterprise in developing their systems." *Ibid.* In balancing those two interests, the Board did not consider that functionality differences would have as strong an impact on airline competition as practices like display bias. Thus, for example, while the Board recognized that denial of access to enhancements could have the same kind of anticompetitive effect as bias, it concluded that "when basic display and ticketing capability are not involved, the effect is likely to be less pronounced." *Ibid.*

Secondly, the Board was sensitive to the practical difficulties of requiring strict equality. Thus, it rejected a suggestion that it require vendors to allow participants to update their information through direct interaction with the vendors' data bases because of concerns about technical compatibility and system security. NPRM at 47. In addition, in 1984 strict equality of treatment was simply not as feasible as it would be today. For example, the major airlines were only beginning to establish direct data links among themselves to bypass the ARINC teletype switch and permit faster, more reliable exchange of availability and flight status information; ATP also transmitted fare updates to vendors on behalf of participants only twice each week instead of daily, as is the case today.

The Justice Department's examination of the CRS and airline businesses has convinced it that the vendors have structured their systems in ways that increase their sales at the expense of their airline competitors. The Justice Department further believes that vendors have little incentive to eliminate bias, because it produces a large amount of revenues and because the incremental revenues enable the vendor to offer potential subscribers more attractive prices. Justice Dept. Comments at 33–34. Since competition for subscribers appears unlikely to eliminate the bias, the Justice Department recommends consideration of a rule that would mandate some degree of functional equality, either by requiring the systems to equalize the functionality for both the vendor and the participating carriers or by requiring vendors to create a computer system for subscribers that would be separate from the carrier's internal computer system. Other commentors supporting a strengthening of the rules relating to functionality include Texas Air, Pan American, Northwest, TWA and Delta.

The major vendors contend that there is no basis for increased regulation of functionality. They argue that CRSs do not produce incremental revenues. Moreover, if the systems do produce such revenues, they assertedly could not result from any architectural features, since making a booking on any carrier is essentially as easy and reliable as making a booking on the vendor. As a factual matter, we cannot agree with the major vendors' claims. The claim that incremental revenues no longer exist is dealt with above. It is sufficient here to note that, notwithstanding American's statements in its comments, its internal documents and those of every other vendor show that each vendor believes that it obtains incremental revenues because its subscribers use its CRS, and that it makes business decisions based on that belief (*e.g.*,) determining the value of a particular agency's agreement to become a subscriber), as discussed above. Those beliefs are buttressed by numerous internal analyses by the airlines and vendors—studies that were undertaken not to persuade an agency or court of a view of the facts that was convenient for the carrier, but to determine whether a proposed course of conduct would be profitable. Those analyses consistently have found a strong incremental revenue effect from automation with the host's system. See Marketing Report at 61–63; 1988 CRS Study, Appendix III. While the precise degree to which architectural bias causes incremental revenues is unclear, the industry's experience shows that it is a major cause, as discussed above.

The major vendors also contend that there is no need to promulgate a rule mandating equal functionality because the intense competition for subscribers has already spurred significant functionality advances and will assertedly drive further improvements. It is true that competition for subscribers has (at least in the past) been intense in some areas. There has also been general improvement in system functionality over the past several years, and Worldspan states that it will develop a "hostless" system that provides truly equivalent functionality.

However, the apparent abatement of competition among CRS vendors for subscribers, particularly over the past two years, makes us cautious about relying on such competition to remedy persistent problems. Marketing Report at 89–90.

In addition, the continuing strength of incremental revenues despite the development of direct access supports the inference that the systems' functional biases have been retained. To the extent that the major vendors continue to be interested in their owners' airline performance, they have strong incentives to retain features that give subtle advantages to their owners while representing to subscribers that their direct access product is perfect. There is a disincentive against making extra expenditures to remove such subtle advantages if the vendor can represent that its product provides a basic direct access service. We are therefore seeking comments on proposals that would require equal functionality.

2. *Proposed Solutions to Functionality Problems.* The industry's development since 1984 appears to have made major functionality improvements feasible and economical. Nonetheless, we are not certain at this point that trying to obtain more equal functionality by regulation is practicable, and we therefore ask the parties to comment further on this issue

As noted, the Justice Department recommends consideration of a rule that would mandate some degree of functional equality, either by requiring the systems to equalize the functionality for both the vendor and the participating carriers or by requiring vendors to create a computer system for the CRS that will be separate from the carrier's internal computer system. As it points out, however, both approaches have potential drawbacks. Requiring equivalent functionality raises questions

about the practicability and enforceability of such a requirement, while requiring the separation of the vendor's internal computer system from the CRS computer could be unduly inefficient and costly, despite the perceived need to eliminate architectural bias. The Justice Department proposes that we seek responses to the following questions:

(1) To what extent is it technologically feasible for CRS vendors to develop enhanced communications systems that would eliminate the host carrier's advantage entirely or for particular key functions? How long would it take? What would be the costs? Would it be more expensive to provide these enhancements for some carriers than for others and why?

(2) How could we effectively establish and enforce performance standards if we elected to require functional parity? What would be appropriate performance standards?

(3) How difficult would it be for CRS vendors to separate their internal reservations systems from their CRSs? How long would it take? What would it cost? What efficiencies would be lost?

(4) How long would it take to develop enhanced links to the CRS for all carriers? How would the quality of the information compare to information provided currently on host carriers?

(5) Should a host carrier be permitted to charge other carriers for any enhanced access that it is required to provide under the rules?

(6) What are the relative advantages of the different approaches outlined by the Justice Department?

Texas Air comments on many of the Justice Department's concerns. It proposes a more detailed requirement of equal functionality which it claims can be satisfied by the vendors within a reasonable period of time and will not impose significant burdens on them, a claim based on Texas Air's own experience as a vendor. Texas Air would have us require vendors to provide equal functionality for five "core" functions: reservations and ticketing, creation of the passenger name record, seat selection and issuance of boarding passes, fare and schedule information, and frequent flyer program information. According to Texas Air, without functional equality in these five areas, travel agents will continue to prefer booking the vendor carrier. Providing equal functionality, moreover, should not cost more than $10 million for each vendor. Texas Air Comments at 46.

American, United, and Covia have attacked the proposals for requiring equal functionality on several grounds. American also stated, however, that it would not oppose a rule requiring a minimum level of functionality. American Reply at 25–26. Moreover, the contentions of these parties that their systems already make bookings on participating carriers almost as easy as bookings on the vendors suggest that a requirement of the type proposed by Texas Air and the Justice Department may require little further effort from these vendors. Covia nonetheless asserts that Texas Air's equal functionality proposal would cost more and require more time than estimated by Texas Air, although Covia has not submitted its own estimates. Powers Affidavit at 22–23, Covia Reply.

Although we are concerned about the possible costs and inefficiencies of a rule requiring equal functionality, we seek comments on whether the proposal advanced by Texas Air promises significant competitive benefits at acceptable costs. The continued strength of incremental revenues poses a serious threat to airline competition, and realistic proposals that directly address such a problem, as Texas Air's does, warrant serious consideration.

As discussed below, we are proposing to require each system to load schedule and fare changes from participating carriers on an equal basis with such changes from the vendor carrier. As to the other key functions included by Texas Air in its equal functionality proposal, we ask commentors to address the questions raised below as well as those given in the Justice Department comments, since we wish to examine these issues more closely before we will adopt a rule requiring equal functionality.

First, any equal functionality requirement would presumably cover less than all the functions provided by a system. Texas Air, for example, discusses a number of functions where a vendor has advantages over the carriers participating in its system, Lenza Affidavit at 22, 24, 25. Despite this, Texas Air proposes to compel vendors to provide participating airlines equal treatment in five key functions, not all functions. Texas Air has submitted its explanation for why these functions are particularly critical and so should be subject to an equal functionality rule. Lenza Affidavit at 6–15, 19–20. Commentors supporting an equal functionality requirement should explain which functions are so important that they should be covered. Commentors should also discuss whether providing equality on some of the functions named by Texas Air (or named by other commentors) would be unduly expensive (or relatively inexpensive).

Secondly, Texas Air has proposed a performance standard, not a rule prescribing how vendors must provide equal functionality, and it has not discussed how vendors could technically achieve the proposed standard. We ask commentors to discuss how vendors could comply with the proposed standard, particularly since the exact equality sought by Texas Air for some functions could require in effect that each vendor create a separate computer for the CRS; otherwise the need for communications links between the vendor's system and the systems of participating carriers would appear to create an inherent advantage, however small, for the vendor carrier since no communications link would be needed. On the other hand, we note Texas Air's representation that System One has provided significantly greater functional equality for Continental and other participating carriers, although some disparities continue to exist, even though Eastern remains the host carrier. In addition, as suggested by the Justice Department, we request comments on whether vendors should be required to separate the CRS' computer from the host's computer.

Thirdly, we are concerned that a rule intended to eliminate architectural bias could be evaded by a vendor, either because functions not covered by the rule are made so difficult that vendor carriers continue to derive incremental revenues from functionality differences or because a vendor makes an insufficient effort to assure the continuing reliability and availability of the enhanced functionality. We note in that regard Texas Air's claims that the direct access link of one vendor has been down a relatively large part of the time in the past; while we cannot determine here whether Texas Air's claims have merit, they illustrate a potential method for frustrating an equal functionality rule.

Fourthly, we request commentors to address the extent to which participating carriers would be willing to make the investments necessary to enable them to use any improved functionality required by a rule. While the vendors would seem unlikely to charge so much for improved functionality that other carriers would not use it, commentors should consider whether vendors could adopt charges or requirements that would deter participating carriers from using the enhancements called for by a rule and whether we could practicably take steps to prevent them from doing so. We note that at least one carrier, America West,

has historically declined to use any system's direct access function, because the cost of such participation appeared to outweigh its value. Marketing Report at 68. On the other hand, although some carriers complain that the vendors' charges for marketing data are too high, several carriers buy the data.

Furthermore, we are not yet certain that we should adopt a rule mandating the partial or complete elimination of architectural bias. It is possible that functionality factors are not as significant a cause of incremental revenues as we now believe, or that other changes, such as our proposals to prohibit restrictions on third-party hardware and software (including a switch) and to eliminate unreasonable subscriber contract provisions may undercut the significance of those factors and make a rule on architectural bias unnecessary or unduly burdensome. Other measures may also more effectively deal with functionality problems at less cost. In addition, we are concerned that basic changes like this proposal or the proposed requirement that vendors allow the use of switches by subscribers may provide a pretext for vendors to raise fees unreasonably or otherwise have unforeseen consequences. Moreover, vendor competition for subscribers appears to be causing vendors to improve information-gathering and booking capabilities for participating carrier transactions, as shown by Sabre's recent announcement that it is upgrading its direct access feature so that agents using direct access will not have to create two PNRs when using direct access and agents can obtain more reliable bookings than is currently possible. "Sabre Announces a Series of Pricing and Booking Enhancements," Travel Weekly (July 12, 1990).

We seek comment on all aspects of the functionality issue, including the needs for, feasibility of, and costs and benefits of our proposal. In addition, we are open to alternative proposals.

Parties should also comment on the proposals made by the Department of Justice, and to the questions they pose. Moreover, as noted above, we request comments on whether allowing agents to use the same terminal to gain access to all four systems would avoid the need for a rule requiring functional equality.

Finally, commentors should advise us on how much time should be allowed the vendors to attain functional equality, assuming we impose such a requirement. (Texas Air has proposed January 1, 1992, as the date on which the equal functionality will go into effect.)

3. *Enhancements.* The current rules only require a vendor to make each enhancement available to all participating carriers on a nondiscriminatory basis if it is offered to any such carrier, section 255.7, and thus allow each vendor to reserve enhancements for itself. An enhancement is a service like the ability to issue boarding passes that is not one of the basic CRS functions.

According to Covia, Apollo already has a policy of making enhancements available to all participating carriers. Covia Reply, Powers Affidavit at 16. Delta, Northwest, and TWA support a rule requiring enhancements be made available to all participating carriers (Northwest and TWA, however, would make the requirement subject to a technological feasibility test).

In view of our concern with architectural bias, we propose to require vendors to make all enhancements available to participating carriers. If we adopt the proposal to require equivalent functionality for five core functions, we would, of course, need to alter the definition of the term "enhancement" to include all services for participating carriers other than those functions. We would also not require that the ease and reliability of access for enhancements be equivalent for participants and hosts.

We doubt that a rule requiring equal access to enhancements would discourage innovation. As with the existing rule, we intend that this requirement be interpreted flexibly to allow the gradual phase-in of enhancements. Thus, vendors would not necessarily be required to make an enhancement available to all carriers simultaneously if such an offer were not reasonably feasible. Within reason, a vendor would still be allowed to develop and perfect an enhancement in conjunction with the host's services, so long as it was made available to other carriers immediately upon completion of the development stage. The proposal, on the other hand, will prevent vendors from using enhancements to benefit the marketing of their own airline services at the expense of their competitors. The proposal would not impose unwarranted costs on participating carriers, for each carrier could choose which enhancements it would use. We believe that this proposal will be technologically feasible. Commentors who believe otherwise should address the matter in their comments.

If we were going to maintain the current rule on enhancements, moreover, the rule would require changing because every system but Sabre is now owned by (or affiliated with) more than one airline. The rules currently define "system vendor" as "a carrier or its affiliate that owns, controls, or operates a system," § 255.3, a definition that would allow every part-owner to share in an enhancement denied to participating carriers. That result seems unreasonable. It would permit seven carriers to use Apollo enhancements that could be withheld from the rest of the industry. In view of our concern about incremental revenues and architectural bias, the only justification for the vendor's retention of enhancements we view as potentially valid is feasibility. We tentatively therefore would limit the exclusive use of enhancements to only those owner carriers that share core computer facilities with the CRS if we kept the current rule, although that would lead to an anomalous result for Worldspan that may warrant some modification in the rule.

4. *Loading of Fares and Schedules.* Vendors now must apply the same standards of care and timeliness in loading information from participating carriers as they apply to the loading of their own information. Section 255.4(d). Several carriers complain that one or more of the vendors load their own information on a quicker schedule, because the vendor can provide information directly to its own system while other carriers must send their fare and schedule information through intermediaries (Airline Tariff Publishing Company, "ATP," for tariffs and Official Airline Guide for schedules). Northwest and TWA allege that Apollo will not load new international fare rules from participating carriers until it receives them in hard copy from ATP, a process that can take two weeks. Apollo, however, loads United's new international fare rules immediately, thus giving United a significant competitive advantage. NW/TWA Comments at 13. The vendors in response represent that they always or almost always load their information on the same schedule used for the information of participating carriers. Covia concedes, however, that United's information is loaded sometimes on a faster schedule than is information on other carriers. Covia Reply, Powers Affidavit at 10–12.

A vendor's loading of its own information on a faster schedule appears to give it an unfair competitive advantage, since the owner's changed fares and schedules may be available in its system before its competitors' offerings are displayed. A vendor's use of quicker procedures for loading its own fares could discourage competitive fare initiatives, because a participating carrier can expect that a vendor will have matched its new fares by the time

they have become available in that vendor's CRS. We therefore propose to amend the rule to require that owner carriers of a vendor use the same procedures for providing information to their system that are applicable to participating carriers, *i.e.*, if participating carriers must submit their new fares through ATP, then the owner carriers must also send their fare changes through ATP. Since each vendor says it always or almost always loads the information on participating carrier services as quickly as information on its own services, this proposal should not create any significant burden for the vendors. The proposal also should not result in any significant delay in the availability of information on a vendor carrier's services to its system's subscribers.

Although the rules currently require vendors to apply the same standards of care to the loading of schedule and fare information of participating carriers that are applied to a vendor's own information, Pan American and Texas Air claim that information on their services is often displayed incorrectly. The major vendors contend that these complaints are unwarranted. We cannot determine in this proceeding whether the instances cited by Pan American and Texas Air represent isolated errors by the vendors or whether such errors routinely occur. We believe, however, that a vendor's consistent inability to load correctly the information of other carriers would violate the rules and that a participating carrier should be able to obtain remedies if that occurs, since the carrier is paying fees for services that include the accurate display of its information. We believe that carriers should be able to enforce their right to accurate information displays through contract suits in court.

H. Booking Fees

The CRS rules allow vendors to charge other carriers fees for displaying their services and for making bookings through the system, § 255.5. The rules require that the fees be nondiscriminatory but set no limit on the level of such fees. Since the rules took effect, the vendors seemingly have been affecting airline competition by setting booking fees at supracompetitive levels. According to several past studies, they can charge high fees because competition does not restrain the level of booking fees: almost every airline must participate in each system and has no practicable way of encouraging agents to use a system that charges lower booking fees (agencies do not pay the fees and so have no incentive to use the system with lower booking fees). These studies also found that the fees shift large sums of money from participating carriers to the vendors. Unlike booking fees, which are paid only by participating carriers, the fees paid by subscribers are limited to some extent by competition.

Given the Board's findings on the vendors' ability and incentives to affect airline competition by imposing discriminatory charges for CRS access and our determination that these circumstances have not changed, we plan to maintain the current prohibition against discriminatory booking fees.

A number of parties—the Justice Department, most U.S. airlines, ARTA, ECAC, and others—have asked us to propose rules limiting the level of booking fees.

While we are prepared to consider a rule that would cause competitive forces to alleviate or eliminate the competitive problem created by the vendors' ability to charge booking fees, we are reluctant to begin regulating booking fee levels. Since the parties have not proposed a practicable rule that would enable competition to restrain the level of booking fees, we are not proposing a rule on booking fee levels at this time. We believe that any effort to regulate fee levels may well have more disadvantages than advantages. A rule limiting booking fees would be equivalent to rate regulation, and rate regulation usually creates inefficiencies. For example, it reduces incentives to minimize costs and encourages the padding of the investment base, as the Justice Department points out. Justice Dept. Comments at 43. In addition, the smaller systems have had the highest costs due to the economies of scale in the CRS business, so any rule limiting booking fees could substantially reduce the profitability of the smaller systems. Moreover, while the commenters have suggested a variety of proposals that would limit booking fees, each of their proposals seems to have flaws that outweigh its merits. Most of the proposed rules, moreover, would not effectively alleviate a major problem caused by the current fee structure: since the charges paid by most travel agencies do not cover the cost of their CRS services, they have little incentive to choose a system that is the most efficient and provides only those services that their customers would be willing to pay for.

Furthermore, our other proposals may reduce the vendors' ability and incentive to charge supracompetitive fees. In particular, the agents' ability to access several systems from the same terminal could create a realistic option for some carriers of withdrawing from a system with high fees, a possibility that would decrease the need for a rule on booking fee levels. Commenters should discuss whether other changes proposed by this notice would alleviate the problem of supracompetitive fees.

In addition, all of the carriers controlling a CRS except American and United pay more booking fees than they receive. Marketing Report at 58 (1988 figures). American received $200 million more in fees than it paid in 1988. United's share of the fees received by Apollo, on the other hand, roughly equalled its payments to all systems. Thus most vendors do not receive net benefits from booking fees.

Nonetheless, we are willing to consider the issue further, at least if parties can propose a practicable rule relying on competition to restrain fee levels. We could not adopt a rule regulating fee levels, however, unless we were persuaded by the comments that it was workable and would provide significant net benefits. Any party proposing a booking fee rule should predict to the extent possible its likely effects.

For example, any rule that substantially reduced the vendors' booking fee revenues would affect the vendors' desires to gain more subscribers and their pricing of CRS services to travel agencies. Parties should therefore comment on these matters. In addition, although our primary concern in this proceeding is airline competition, we ask the parties to comment on the potential impact on travel agencies of all the proposed booking fee rules.

1. *Remedies Proposed by Commenters.* Although we are concerned with the competitive implications of supracompetitive booking fees, any regulation of booking fee levels would have significant disadvantages. In addition, the various rules proposed by commenters all have drawbacks that have kept us from proposing to adopt any of them, as discussed below. In considering proposed fee regulations, we will focus on the amount of continuing regulatory intervention each would require, the practicability of each, and the amount of disruption a rule would cause to existing business operations and relationships (*e.g.*, a rule that would compel vendors to obtain all their compensation from travel agencies is unattractive because it would compel radical changes in the vendors' business plans).

Moreover, any rule on fee levels presents the question of the level of service that should be covered by the

fees, *i.e.*, whether the rule should cover fees for only standard CRS services, for standard services with common enhancements such as boarding pass issuances, or for all services offered by the vendor. Finally, supporters of a fee rule need to address the concerns raised by the Justice Department about the vendors' possible ability to evade a rule by creating other charges. *See* Justice Dept. Comments at 47–48.

(a) *Reasonable Fees.* The proposal that we require reasonable booking fees or fees reasonably related to costs, as suggested by the European Community, ECAC, Midwest Express, and Pan American, would require us to determine a "reasonable" fee level. That would require too much regulatory intervention and could not result in a precise determination of "reasonable" fee levels. In its rulemaking the Board concluded that no rule requiring reasonable fees should be adopted. We agree with the Board's reasoning. *See* Final Rule at 31.

A rule requiring reasonable fees would compel us to engage in protracted ratemaking proceedings involving difficult cost allocation and other accounting decisions. Among other things, we would need to divide costs between several classes of users: Participating carriers, travel agencies, and each system's host. While we could make a rough allocation of costs, as shown by our 1988 study of CRS profitability, a cost allocation would be arbitrary to some extent. American even claims that a cost allocation between airlines and travel agencies "is simply impossible under any economic theory." American Reply at 31. In addition, due to the industry's economies of scale, the reasonable fees for the smaller systems would probably be greater than the fees for the largest systems, a result that appears anomalous in terms of each system's value to participating carriers. The procedural and logical difficulties of trying to calculate a reasonable fee level convince us that this proposal does not warrant further consideration.

(b) *The Justice Department's Proposals.* The Justice Department suggests two options on booking fees: Prohibiting vendors from charging booking fees, or requiring agencies to pass the fees on to their customers. The Justice Department proposed these two ideas because it would like to have CRS fees set by market forces as much as possible, and these proposals appeared to be the most practicable means of bringing market forces to bear on CRS fee levels.

The proposed prohibition against charging any booking fees (often called the zero fee rule) would eliminate the booking fee problem without requiring ratemaking proceedings or other continuing regulatory intervention. However, it would require vendors to recover the costs of operating the CRSs entirely from their subscribers (and other travel service providers), which undermines the proposal's fairness. In addition, it would cause major changes in the way in which vendors do business with subscribers, since vendors compete for subscribers in part to obtain a stream of booking fees. These changes could be disruptive and have unforeseen effects. We therefore doubt that a zero fee rule is a desirable means of alleviating the booking fee problem.

The Justice Department's alternative proposal would require booking fees to be passed on to consumers as a separate charge added to the ticket price. While this would give consumers an incentive to look for an agency with the lowest fee, the Justice Department recognizes that the amount of the fee relative to the total cost of a ticket probably would be too small to cause most consumers to shop for an agency using the system with the lowest fee. The Justice Department believes, however, that corporations purchasing large amounts of tickets could have an incentive to use an agency that subscribed to a CRS with the lowest booking fees.

This proposal appears to present problems. First, it would create an incentive for travellers to book directly with an airline to avoid the additional fee. Secondly, it may not adequately discipline booking fee levels, since an agency could offset the impact of the fee by splitting its commissions with its customers (or offering them more services). Any commenters who support the proposal (or any similar proposal) should address the questions posed by the Justice Department on the benefits and costs of the proposal and its practicality. Justice Dept. Comments at 47–48.

(c) *The Alaska, America West & Midway Proposal.* Alaska, America West, and Midway propose allowing vendors to recover only half of their revenues from participating carriers. If a vendor's aggregate receipts from booking fees exceeded its receipts from subscribers during a one-year period, the excess would be refunded to participating airlines in the following year. This assertedly would limit booking fees while recognizing that both airlines and travel agencies benefit from CRS services. Since a limit on booking fees would help preserve airline competition, they contend that it will help the agencies serve their customers, because the competition will cause airlines to provide better service and will help ensure a greater number of travel options.

This proposal has some advantages: it would enable vendors to recover CRS costs from both sets of users, it could set an effective limit on booking fees, and it would allow each vendor the flexibility to rearrange its fee schedules if desirable, *e.g.*, by unbundling CRS charges. The proposal, however, would set a somewhat arbitrary limit on a vendor's receipt of airline fees, although the proposed limit may reflect the sharing of benefits by airlines and agencies. Furthermore, implementing this proposal could be difficult due to the complex accounting questions that would probably arise. First, agencies normally pay charges under monthly leases, not on a transactional basis, and handle hotel and rental car bookings as well as airline services. In addition, the carriers affiliated with PARS and System One have subsidized some subscribers' CRS costs, so that the systems' reported receipts from agencies overstate the amounts actually paid by agencies. Marketing Report at 54. Other vendors could potentially evade this rule by taking similar action, or by increasing their commission rates to offset CRS charges. These accounting difficulties appear to make this proposal unworkable.

(d) *Freeze Proposals.* Under a proposal made by the Orient Airlines, we would freeze the fees at their existing levels (or at the lower levels prevailing earlier this year), unless vendors could show that increased costs justified fee increases. While such a proposal would keep booking fees from going higher, it would not reduce the existing fees and perhaps would not allow vendors much freedom to modify their fee structures. A freeze could also become unworkable if new enhancements were made available by a vendor.

Three carriers propose analogous rules that would make it difficult but not impossible for vendors to raise fees. Pan American's rule would require vendors to justify any future fee increase. Northwest and TWA suggest that fee changes be arbitrated. While either suggestion could deter fee increases, they could mandate ratemaking proceedings and are unattractive on that ground alone.

(e) *Authorizing Retaliation Against Vendors That Raise Fees.* As a potential check on booking fees, Northwest and TWA suggest that when one vendor raises its fees, other vendors be allowed to charge that vendor the higher fee while maintaining their original fee level for other participating carriers.

Northwest and TWA contend that it may deter a vendor from charging a higher fee, since that vendor might end up paying higher fees to other vendors while its competitors' fees were not raised. We have some doubts about the effectiveness of this proposal. In particular, Sabre's booking fee receipts are much higher than American's booking fee payments, so authorizing vendors to charge American higher fees if Sabre raised its booking fees would not appear to make a Sabre fee increase costly for American. Any commentors supporting this proposal would also need to address whether vendors should be able to raise fees for carriers that own part of another CRS without having much control over its operations (*e.g.,*) USAir and each of the foreign airlines with a share in Apollo).

American proposes allowing U.S. vendors to vary their fees for foreign carriers affiliated with a foreign CRS, since otherwise U.S. vendors may be forced to charge such carriers booking fees lower than those charged by the foreign system, unless the U.S. vendor raises its fees for all participating carriers. American Comments at 44. We see no reason to adopt this proposal. A foreign system's fees may be higher because its operating costs, *e.g.,* for telecommunications, may be higher. Furthermore, we note that CRS fees in the European Community must be reasonable under the Community's CRS regulations.

2. *Transactions Covered by Fees.* Several commentors, especially Pan American, complain that vendors now charge them a booking fee for agent transactions that do not create a booking for the carrier. For example, if a traveller makes a booking directly with an airline and later asks a travel agent to issue the ticket, the agent will create a passenger name record (PNR) in the CRS in the course of issuing the ticket, and the agent's creation of the PNR will create a booking fee obligation for the airline. Similarly, some airlines suspect that they are charged booking fees when an agency's switch from one system to another causes the agency to create new PNR's in its new system for all the bookings made on the old system. Pan American has estimated that Apollo, Sabre, and System One overcharge by one-third by demanding payment for transactions that do not constitute booking transactions; Alaska, America West, Midway, and several foreign airlines support Pan American's complaint.[9]

Several parties have also complained that Apollo's new fee structure is unreasonable because it may increase fees sharply for some carriers, such as Aer Lingus, or because cancellations should not be subject to a charge, both because of tradition and because cancellation transactions assertedly typically benefit the agency, not the carrier. Alaska, America West, and Midway additionally charge that Apollo's imposition of separate fees for cancellations and rebookings will make it much more expensive for a carrier to reduce its fares, since that results in many rebookings by agencies, and that the participating carriers have no control over their booking fee expenses, since the agencies have the freedom to change bookings in ways that incur new booking fee costs. In response, Covia contends that carriers can reduce their booking fee expenses by reducing their schedule and fare changes. Covia Supp. Comments at 6.

We are unwilling to prevent a system from varying its charges according to the type of CRS transaction, as long as the fees are nondiscriminatory. A vendor may have legitimate reasons for requiring fees for transactions, such as cancellations, which were earlier free of all charges. We therefore are not proposing to define the types of transactions for which fees may be imposed on participating carriers by a vendor. Nonetheless, the vendors' apparent ability to arbitrarily determine which types of transactions should require payments by participating carriers is troublesome and confirms their ability to ignore the wishes of their customers—the participating airlines—in operating their systems.

However, the basic booking fee competitive problem is the inability of market forces to influence the fee levels, not the vendors' expansion of the type of transactions for which airlines must pay fees. In addition, our analysis of the vendors' profits was based upon their actual booking fee receipts, not on an estimate of their receipts under Pan American's definition of a booking.

3. *Booking Fee Bills.* Pan American, Aer Lingus, Air France, the Orient Airlines, SAS, Varig, and LTU complain that vendors refuse to provide adequate billing information, so participating carriers have great difficulty in determining whether the bills are accurate. *See, e.g.,* LTU Comments at 5–6. Their manual review of bills, however, has allegedly uncovered many erroneous charges. For example, China Airlines has assertedly been billed for Los Angeles-Beijing bookings, although it does not serve that market. Orient Airlines Comments at 52–53. LTU cites several instances where it has been billed for routes it does not serve. While these bookings may often result from mistakes by travel agents, the participating carrier should not be charged a fee for a transaction that does not benefit it. (Covia asserts that it has cancelled fee charges for such erroneous transactions by agents.)

In addition, some commentors charge that Sabre's recent adoption of a minimum booking level requirement in its subscriber contracts gives Sabre subscribers an incentive to make false bookings at the expense of participating carriers. Under the new Sabre contracts, if the subscriber fails to meet the minimum booking requirement, the subscriber must pay Sabre $2 per CRT for each booking short of the contract level. The possibility that subscribers will make false bookings in order to meet the goal, according to these commentors, further demonstrates the need for requiring that booking fee bills be accurate and capable of being audited. *See, e.g.,* Aer Lingus Supp. Comments at 3.

Inaccurate and incomplete bills appear to be a problem. We are therefore proposing that vendors be required to provide accurate and detailed billing information. As a practical matter, moreover, allowing vendors to impose false charges on participating carriers would enable them to evade the prohibition against discriminatory fees.

LTU has proposed that we require vendors to provide invoices on magnetic media giving the following information for each segment: PNR record locator number, booking status, agency ARC number, CRS transaction date, city-pair information, flight number, flight date, and class of service. Commentors should address whether a general rule requiring adequate billing is sufficient or whether specific billing information should be required (and, if so, which items of information and in what form).

I. Domestic Marketing and Booking Information

The current rules require vendors to make available to all U.S. participating carriers on nondiscriminatory terms all of the domestic marketing, booking, and sales data that the vendor chooses to generate from its system, § 255.8. The Board adopted this requirement because only the vendors had had access to potentially valuable data created by the

[9] A System One officer sent Pan American a letter on March 19 defending System One's fee practices and denying that Pan American was charged for transactions for which no fee could fairly be charged. A copy of this letter has been placed in the docket.

bookings made on the CRSs, even though the agencies' bookings on competing airlines generated most of the data. The data appeared to give vendors a competitive advantage because they knew how many bookings were being made by individual agencies on each airline, both in total and for individual city-pair markets. The Board determined to make the data available to all participating U.S. carriers rather than prohibit vendors from using the data because a prohibition appeared unenforceable. NPRM at 56.

The rule has ended the vendors' exclusive access to the data. Participating carriers may now purchase from each of the vendors data tapes containing marketing information reflecting each subscriber transaction conducted in the system. Nonetheless, some carriers have complained that this information is provided in a form that is difficult and expensive to use and at too high a price. For these or other reasons, relatively few carriers buy the marketing data. More importantly, several participating carriers suspect that the major vendors continue to use CRS data for marketing and planning purposes which are either never made available to other carriers or made available only on a delayed basis. Marketing Report at 84–85.[10]

Despite these complaints, we see little purpose in significantly changing the current rule. We have little evidence that vendors are routinely making unfair use of the CRS data or that their doing so would significantly harm their competitors. In addition, Covia states that it provides marketing data on a daily basis. Covia Reply, Powers Affidavit at 20. We believe, moreover, that rules prohibiting vendors from using their data on a realtime basis would be difficult to enforce.

To the extent that the data tapes are difficult for a participating airline to process, an airline could buy the tapes and turn them over to a third-party data processing firm for analysis. Alaska, America West, and Midway ask that the rules specifically allow such firms to acquire the tapes and produce reports for participating carriers. Although these commentors assert that vendors restrict third-party firms from undertaking such processing, American represents that one such firm is processing Sabre's data for Texas Air. American Reply at 45. Third-party firms should be able to use the tapes to produce usable data for participating carriers, but we do not see why a carrier cannot now purchase the tapes and turn them over to a third party for processing. If commentors believe an amendment is needed to enable participating carriers to use such firms, they should explain why the current rule does not allow third-party processing and suggest language allowing it.

The proposal by Alaska, America West, and Midway, however, seems to urge a result under which the data-processing firm could purchase the tapes directly from the vendors and then sell the analyses to other carriers, who would then avoid paying the vendors for the tapes. We are aware that the vendors' refusal to sell less than all of the marketing data has made purchasing the tapes very expensive—and perhaps prohibitively expensive—for some participating carriers. Nonetheless, the proposal by Alaska, America West, and Midway would apparently deprive vendors of control over the disposition of the data.

Northwest and TWA assert that the rule should be changed to prohibit a vendor from using or selling any data on a carrier's bookings without the latter's consent. The Board, however, thought that prohibiting the vendors' marketing departments from using the data would be unenforceable. The persistent complaints by participating carriers that vendors are still unfairly using the data despite the current rule suggests that the Board's reasoning is valid, at least for some systems. Northwest and TWA have not alleged that their proposal would be enforceable. We therefore will not adopt it.

Two travel agency groups—ASTA and Travel Trust—contend that vendors should be prohibited from turning over data on a travel agency's bookings to other airlines. ASTA contends that such an exchange of information among competitors would violate the antitrust laws. ASTA, however, does not attempt to show how our rule could lead to anticompetitive results, and in many instances competition improves when competitors have increased access to information. *See, e.g.*, Order 88–12–35 at 10 (December 15, 1988). ASTA also ignores the effect of its proposal: the vendors would again have exclusive access to the data generated by CRS bookings.

Travel Trust objects to the current rule because it allegedly enables each airline to learn the "intimate, proprietary details" of each agency's business and because participating carriers use the data to pressure agencies into increasing their share of bookings. Travel Trust overlooks the vendor's ability to learn the details of its subscribers' operations and to use the information to coerce them to increase its share of their bookings. Although Travel Trust may not object to one carrier having the ability to do that, allowing only the vendor to use the data would be contrary to our goal of ensuring that the vendors' market power is not used to prejudice airline competition. While we appreciate an agency's regret that each airline can learn details of its business, we find that result preferable to a regime in which only a few carriers have access to the information while their competitors have no ability to obtain such data.

J. International Marketing and Booking Information

The rules prohibit a vendor from releasing data on the international operations of any carrier without that carrier's consent. This prohibition resulted from the Board's conclusion that the release of data by U.S. vendors to foreign carriers would be unwise and unfair since there was no assurance that foreign CRS vendors would make comparable data available to U.S. carriers. ER–1396, 49 FR at 46347 (November 26, 1984).

American, Covia, ECAC, and the European Community contend that we should modify the rule to allow foreign carriers to obtain U.S. CRS data on international bookings if they provide on a reciprocal basis the data generated from their own systems. Alaska, America West, and Midway ask that U.S. carriers be allowed to obtain the data on international bookings since now only the vendors have any access to international booking data.

We have tentatively determined to allow both U.S. and foreign airlines to have access to international booking data, subject to a requirement for foreign carriers that any CRS with which they are affiliated must provide comparable data to U.S. carriers. The reciprocity requirement will satisfy our concerns with making international data available to foreign carriers. Our proposal will also be consistent with our decisions granting American exemptions from the rule so that it could provide Sabre data on international bookings to foreign carriers who provide comparable data to U.S. carriers, Orders 89–8–36 (August 21, 1989), 89–4–44 (April 19, 1989), and 88–12–35 (December 15, 1988).

The exemptions, however, allowed the release of Sabre data only for routes between the United States and the foreign carrier's homeland, not for all international markets (*e.g.*, Lufthansa could obtain data only on U.S.-Germany

[10] As noted in the Marketing Report, our staff is investigating one vendor's possible violation of the rule requiring that each vendor make available to participating carriers all domestic marketing data generated from its system. *Id.* at 85.

bookings). American proposes a rule which would allow foreign carriers to obtain all international booking data, which may be too broad. Parties should comment on whether foreign carriers should have access to data for all international markets, whether U.S. carrier access to the data should be limited in any way, and whether access to and use of the data by participating carriers should otherwise be restricted.

In addition, the draft rule would require vendors to give U.S. carriers notice when a foreign carrier will be given access to international booking data. The notice requirement would let U.S. carriers know that the foreign carrier is required to provide reciprocal access to its booking data.

K. Subscriber Contracts

1. *Background.* In an effort to reduce the vendors' market power, the Board adopted rules "to prohibit contract provisions that impede the [agencies'] use of multiple systems and impede switching between systems." NPRM at 34. These rules were intended to reduce the existing vendors' market power by removing obstacles that kept other systems from obtaining an adequate subscriber base. The rules prohibit contract terms longer than five years, the tying of commissions to automation, requirements that subscribers use a vendor's system for issuance of its tickets, varying the price charged to the subscriber based on the identity of the airline whose services are sold, and direct or indirect vendor prohibitions on the acquisition or use of other systems by subscribers. 14 CFR 255.6. The Board allowed five-year contract terms in reliance on American's representations that subscribers might lose potential tax benefits if their contracts had shorter terms and that vendors could and would sign contracts of shorter length. NPRM at 52; Final Rule at 41. The Board chose not to adopt a rule invalidating liquidated damages clauses in subscriber contracts. Final Rule at 41–42.

Despite the Board's rules, the vendors' contracts contain clauses significantly restricting, although not eliminating, competition for subscribers. Sabre and Apollo, and later the other vendors, adopted liquidated damages clauses that typically require a subscriber who breaches its contract (*e.g.*, by switching systems) to pay the vendor not only the future payments the subscriber would have made under the contract but also a substantial portion of the airline booking fees that the subscriber would have generated during the remaining life of the contract by using the system. American, United and TWA created these contract provisions shortly after the rules went into effect and then launched campaigns to have all their subscribers sign new contracts for new five-year terms containing the restrictive clauses. 1988 CRS Study at 124–127.

In addition, some vendors reportedly require a subscriber switching to another system before the end of the contract term to repay a "credit" equal to the sum of the cumulative total of any discounts received by the subscriber from the standard subscriber rate and any cash bonuses or free services or products given the agency in return for its original subscription agreement. Unlike liquidated damages, which become smaller as the contract nears its end, the credit becomes larger. *See, e.g.*, NW/TWA Comments at 22.

The vendors also seek to obtain renewed contracts from their subscribers at every opportunity, for example, whenever subscribers need additional terminals at a new or existing location. When subscribers wish to add or remove terminals, vendors either try to persuade them to sign a new automation agreement for all their equipment or demand that the subscriber sign a separate agreement, with its own five-year term, for the new equipment. As a result, a large number of subscribers have their contracts renewed relatively frequently, or have their equipment covered by contracts with staggered terms. Marketing Report at 86–87; ARTA Comments at 6. Relatively few agencies have CRS contracts that are close to expiration. For example, in 1986 and 1987 in one group of Apollo contracts only eleven percent had less than three years left in the contract term. Texas Air Comments at 21. In one large group of another vendor's contracts, only 18 percent of the contracts would expire within two years. Justice Dept. Comments, App. at 94.

The Sabre, Apollo, and PARS contracts additionally contained "rollover" clauses under which any addition of equipment (for American and PARS) or any added locations for the subscriber (for United) would automatically trigger the beginning of a new five-year contract term. When these "rollover" clauses became controversial, those vendors announced that they would stop including the clauses in new contracts and would not enforce the existing clauses. 1988 CRS Study at 125.

Furthermore, vendors use provisions that discourage agency locations from using more than one system. These provisions, the "minimum use" clauses, require subscribers to make a certain number of bookings per month on each terminal.

These contract provisions appear designed to protect the major vendors' existing subscriber base and market share. Texas Air thus quotes an American document that stated "the primary intent of the liquidated damages clause was to ensure subscribers do not easily convert to a competitive system." A United document similarly states, "The liquidated damages provision in all new contracts will make conversions of Apollo very unattractive to United's competitors." Texas Air Comments at 19. One document submitted by the Justice Department, moreover, states that one airline's sales people believed that its subscribers' consideration of switching systems or adding a second system "must be prevented from occurring at all costs." Justice Dept. Comments at App. 108.

Initially these contract provisions were not particularly successful, Marketing Report at 89, but conversion activity has slowed appreciably since 1987. One major reason for this slowdown is the fact that System One, which had made the most aggressive efforts to obtain conversions, largely abandoned its conversion efforts after several court decisions upheld Apollo's liquidated damages provisions. Those decisions exposed System One to a large liability for damages, since that vendor had promised to indemnify its new subscribers against damages awarded their former vendors. Texas Air Comments at 22.

These various contract provisions have become controversial. Although largely consistent with the terms of the current rules, these practices have frustrated the Board's expectation that subscribers should be able to switch systems reasonably easily and frequently. Marketing Report at 88–91. While some agencies are reluctant for other reasons to switch systems or make substantial use of more than one system at a location, the various contract clauses seem to have deterred other agencies from switching systems or adding a second system. Marketing Report at 85–91. The Justice Department believes that the vendors' current contract practices make it difficult for smaller systems to compete for subscribers outside regions where their owners dominate the airline market. Justice Dept. Comments at 29.

According to ASTA, agencies now are unable to obtain more contractual freedom because vendors present the restrictive provisions to most agencies on a take-it-o-leave-it basis. ASTA Comments at 20. ASTA's allegation is consistent with other evidence that vendors almost always refuse to grant

contract terms shorter than five years. Marketing Report at 89. Travel Trust nonetheless argues that the vendors already vigorously compete for subscribers and cannot impose onerous terms on subscribers. Given the comments of ASTA and ARTA, we believe that Travel Trust's claims are not true for most agencies, especially those who do not receive discounted CRS services. However, Worldspan recently announced its adoption of a standard subscriber contract that would not include liquidated damages provisions or minimum use clauses and would enable agencies to choose a three-year contract term instead of a five-year term. Aviation Daily at 573 (September 27, 1990).

American contends that, if agencies wanted the freedom to switch systems more frequently, vendors would compete with less restrictive contracts. However, we believe that agencies accept the restrictive clauses because they do not have the bargaining power to overcome the vendor's insistence on the clauses, although we would like parties to comment further on whether travel agencies could obtain less restrictive contracts when they obtain or renew a CRS subscription. Our final decision on this issue, however, will depend primarily on whether we find that eliminating restrictive contracts will benefit airline competition, not on a finding that agencies should be relieved from the consequences of the vendors' greater bargaining power.

A number of commentors urge us to prohibit restrictive contract terms. Such a rule is supported by the Justice Department, many airlines (Delta, Northwest and TWA, Texas Air, Alaska, America West, and Midway, Midwest Express, Southwest, and SAS), the two travel agency trade associations (ASTA and ARTA), and Hewins Travel. Opposing such a rule are American, United, Covia, and Travel Trust. The Justice Department and Alaska, America West, and Midway, however, express a concern that without rules addressing related problems a rule freeing up subscriber contracts could have damaging effects; the Justice Department fears that it would make it easier for each vendor to obtain a CRS monopoly in cities where it is the dominant airline, and the three airlines suggest that increased competition for subscribers will result in higher booking fees.

We have determined to propose rules eliminating certain restrictive contract practices that reduce travel agencies' ability to switch systems or to use multiple systems. We see little legitimate need for the vendors' restrictive contract terms, and increased competition for subscribers could benefit airline competition. Moreover, our proposal to allow agencies to use a single terminal to access any system would be ineffective if we do not proscribe minimum use clauses and similar contract provisions (*e.g.*, lower subscriber fees for a higher volume of bookings per terminal).

Although we are proposing rules on subscriber contracts, we are concerned that promoting increased competition for subscribers could have adverse effects that may offset its benefits. As a result, we ask commentors to carefully address all the potential advantages and disadvantages of our specific proposals on subscriber contracts.

2. *Apparent Need for Rules.* The major vendors' current practice of demanding five-year contract terms has no apparent legitimate purpose. As the Justice Department points out, a long-term contract can be an efficient means for the parties to reduce uncertainty and spread risks, but it can also exclude or discourage entry by competing firms. Justice Dept. Comments at 52–53. The vendors' long-term contracts seem intended to discourage entry. Evidence in the record thus indicates that the major vendors have adopted a number of contract terms, most notably the liquidated damages clauses, for the purpose of preventing a loss of subscribers. On the other hand, the contracts appear to provide little protection for subscribers, since the vendors commonly retain the authority to increase the fees charged subscribers. *See, e.g.*, ASTA Comments at 21. The contract clauses' apparent anticompetitive purpose and effects call for our proposing rules that would bar vendors from imposing such contract terms on subscribers.

The use of long-term contracts often reduces contract negotiation costs. However, shortening the maximum term of subscriber contracts should not increase the parties' negotiating costs very much, since the vendors' practice of obtaining new five-year contracts from their subscribers whenever possible has resulted in most contracts being renegotiated every few years.

Providing subscribers a greater ability to switch systems would benefit airline competition in several ways. First, it should encourage carriers with a CRS interest to enter new markets, since they would have a greater ability to obtain a significant number of CRS subscribers at the new city, as the Justice Department points out. A greater CRS presence would give them a better chance of successfully competing against an incumbent carrier. In addition, giving vendors a greater opportunity to compete for subscribers should give the smaller systems an opportunity to obtain a larger market share, which would give them greater financial resources for improving their systems.

Since the vendors compete for subscribers to some extent on the basis of the quality of their CRS services, increasing this competition would also further our goal of encouraging technological innovations that could reduce architectural bias. While the Justice Department appears to doubt that vendors would jeopardize their incremental revenues by reducing architectural bias, a significant number of travel agencies are sufficiently interested in improved information and booking capabilities on all carriers to encourage vendors to improve system functionality. The vendors' past improvements in the quality of their direct access features presumably stemmed from the agencies' desire for better functionality, and competition for subscribers should encourage them to make further improvements, as American claims it is doing now.

In contrast, when long-term contracts and related clauses prevent subscribers from switching systems, the vendors have little need to provide better products and services to their subscribers. As ASTA describes the effect of the current restrictive contracts, "[T]he large vendors are essentially immune from market displacement due to poor performance, failure to innovate or excessive pricing," ASTA Comments at 16.

Because of the contract restrictions, even when subscribers have the ability to convert to a new system, the outcome of the bargaining over subscriber contracts does not match what would happen in a free market. Other vendors cannot convert an agency before the end of its contract unless they both match the price offered by the incumbent vendor and agree to indemnify the agency for liquidated damages. Justice Dept. Comments at 28–29.

Furthermore, the Board's rationale for setting the maximum contract term at five years—the need to preserve certain tax benefits by allowing five-year terms—is no longer valid, since the tax provision in question was repealed.

Finally, shortening the maximum contract term could avoid a need to intervene in other areas where commentors have argued that additional rules are necessary, such as limiting the damages recoverable when a subscriber terminates its CRS contract before the

end of its term. It would also make it easier to resolve other issues, such as the vendors' common practice of urging subscribers to sign a new five-year subscription contract whenever an agency wishes to add more CRS equipment. To some extent, rules in these areas could be difficult to implement. The Justice Department, for example, points out how easily vendors could probably evade a rule limiting liquidated damages. Justice Dept. Comments at 54–5.

For these reasons, we are proposing to shorten the maximum length of contract term. However, this proposal raises several questions that require further examination.

While we tentatively find that the restrictive contract clauses have substantially reduced the travel agencies' ability to switch systems, American and Travel Trust argue that competition for subscribers is vigorous and not dampened by these contract provisions. *See also* Marketing Report at 23, 24. In addition, Worldspan's new contract terms may indicate the beginning of competition for subscribers through less restrictive contract terms. On the other hand, while a significant number of agencies did convert from one CRS to another two or three years ago, the continuation of such competition appears doubtful. As indicated, the judgments enforcing Apollo's clauses against agencies that switched to System One have largely ended System One's conversion efforts. ASTA and ARTA also assert that the contract provisions substantially interfere with agency desires to switch CRSs. We therefore ask commentors to provide us more recent data on this issue.

Another question on which we request more information is the proposals effect on travel agency costs. Providing agencies more freedom to switch systems may result in vendor demands for higher subscriber charges. The higher charges could result because the vendors may be less likely to provide discounts and bonuses to agencies in return for new subscription agreements if the agreements will not assure the agencies' production of a stream of booking fees for as long a period. The possibility of higher charges has not kept us from proposing to outlaw restrictive contracts for several reasons. First, ASTA and ARTA both urge us to adopt rules giving agencies a greater ability to switch systems or use multiple systems. Secondly, although vendors may require subscribers to pay higher charges for CRS services, any such cost increases should be offset by the cost savings produced because agencies will have a greater ability to switch systems to obtain better and more efficient CRS services. Thirdly, the increased competition for subscribers should prevent undue price increases. Moreover, the subscribers' greater ability to switch and add systems should encourage vendors to compete more on providing better functionality and information, which should cause vendors to offer system improvements enabling agencies to conduct their business more efficiently.[11]

The CRS rules of both Canada and the European Community bar vendors from imposing longterm contracts on subscribers (the Canadian limit is three years, while the European Community limit is one year). We ask the parties to provide information on the effect of these rules on the agencies' ability to switch systems (or add systems) and on their costs.

As indicated, rules increasing competition for subscribers present other risks that require consideration before we can finalize a rule shortening the contracts' length. First, increased competition for subscribers by vendors may increase the vendors' subsidization of the agencies' CRS costs, although other commentors think that vendors would become less likely to subsidize agency CRS costs. If the vendors' costs of competing for subscribers do increase, that would encourage vendors to raise booking fees to offset higher subscriber costs.

As noted by the Justice Department, the agencies' usual desire to use the system offered by the dominant carrier and the vendors' apparent practice of offering airline service benefits to their subscribers could lead to a series of local CRS monopolies if agencies had more freedom to switch systems. Justice Dept. Comments at 49–50. Indeed ASTA supports rules providing greater contract freedom for agencies because the vendors' current restrictive contracts deny agencies the ability to switch to another system if the vendor airline's importance in an agency's local market shrinks substantially, ASTA Comments at 26.

Despite the threat that greater contractual freedom will give vendor airlines a greater ability to use their dominance of regional airline markets to obtain dominance of the regional CRS markets, the overall benefits to competition appear to justify shortening the maximum term of subscriber contracts. We also note that our proposal that subscribers be allowed to reach any system from a single terminal, if successful, would dilute the adverse competitive effects of the vendors' use of regional airline dominance to obtain CRS dominance. In addition, we are considering a prohibition against the tying of marketing benefits to CRS use. Our proposal to require vendor carriers to participate in each other system and its enhancements, when commercially reasonable, should also reduce a vendor's ability to dominate the CRS market in cities where it dominates the airline market. Finally, the risk that a vendor airline's market share will be large enough to foreclose competition in a regional CRS market will be greatest at cities used by only one vendor carrier as a hub, *e.g.*, Minneapolis-St. Paul and Salt Lake City. The potential loss of CRS competition in these cities does not appear to outweigh the competitive benefits of shorter contract terms at other cities. Nonetheless, we ask parties to comment further on whether our proscription of restrictive subscriber contracts will give regionally-dominant vendor carriers an unacceptable ability to obtain dominance in regional CRS markets.

Although we recognize that our proposal to shorten the maximum permissible contract term and to proscribe other restrictive contract clauses may have potential disadvantages requiring further examination, other disadvantages predicted by the major vendors and Travel Trust do not appear significant or probable.

The major vendors assert that the restrictive contract terms are a reasonable means of protecting the vendors' investment in the systems and the equipment provided subscribers. For the reasons discussed above, we believe the vendor contracts are not needed to protect the vendors' legitimate interests and that the clauses substantially reduce competition.

The major vendors' defense of the clauses also assumes that the five-year contract terms and the related liquidated damages and minimum use provisions are necessary because the vendor must ensure its receipt of booking fees in order to offset the discounted rates given subscribers. However, the vendors have included such provisions in many contracts that also require the subscriber to pay the "rack rate", the nondiscounted

[11] If our other proposals (including the proscription of minimum use clauses) are effective in enabling subscribers to use several different systems, there may be no need for a rule on the length of subscriber contracts. However, since relatively few agencies are likely to immediately begin making greater use of multiple systems, a rule limiting the maximum length of subscriber contracts is likely to remain necessary for some time.

subscriber charge. Evidence submitted from the Apollo contract cases indicates that United at least only enforces the clauses if a subscriber wishes to convert, not if the subscriber fails to meet the minimum booking level for other reasons.

Moreover, as Northwest and TWA point out, CRS equipment is mobile and can be moved to another agency if a subscriber switches to another system. NW/TWA Comment at 26. The clauses therefore appear unnecessary to protect the vendors' investment in equipment. Furthermore, if agencies choose to use their proposed freedom to obtain equipment from independent firms rather than the vendors, the vendors over time would have a smaller investment in computer equipment requiring protection.

According to American, allowing agencies to have additional opportunities to switch CRSs will hurt the smaller vendors, since Sabre assertedly is functionally superior and will increase its share of the CRS market if agencies have more freedom to pick the best system. Nonetheless, the smaller vendors support contract changes.

Although American claims the restrictive clauses are legitimate as a means of protecting a new venture, American Reply, Dorman Affidavit at 8, this claim is not consistent with what happened in the CRS industry. These clauses were in fact primarily initiated by the largest vendors, not the smallest. 1988 CRS Study at 124–127. American also has not explained why such clauses remain necessary in the United States where Sabre has long dominated the CRS business. Finally, almost all agencies have CRSs, so, as the Board pointed out when similar arguments were made in its proceeding, the contracts prevent entry because few agencies are legally able to choose a new system at any given time. NPRM at 52.

The major vendors also cite the court decisions in the Austin Travel and in re "Apollo" cases as evidence that the liquidated damages, minimum use, and five-year term clauses are reasonable. In our view, the cited decisions do not invalidate our analysis. The courts viewed the liquidated damages clauses as a reasonable means of enforcing the five-year contract term, a term permitted by our rules. The courts also did not consider the restrictive contracts' effects on airline competition, since airline competition was not an issue in those cases.

3. *Length of Contract Term.* We have tentatively determined to give agencies more freedom in switching systems and using multiple systems, although, as indicated, we request more information on these issues. The main proposal in this area, already discussed, would enable subscribers to gain access to any system from one terminal, a proposal which would also require outlawing minimum use clauses. Although that proposal could make the subscriber contract issue moot for at least some agencies, we tentatively consider it desirable to shorten the maximum contract term as well. Those agencies who choose to use dumb terminals or prefer not to use multiple systems for other reasons should benefit from a rule giving them greater freedom to switch CRSs.

In this notice we are proposing to set the maximum term at three years. We note that Northwest and TWA have proposed month-to-month contracts and that Texas Air urges us to adopt a one-year limit, a limit similar to that imposed by the European Community's CRS rules. Other parties suggest there is no need to shorten the maximum term of subscriber contracts. We invite commentors to address the proper maximum term for subscriber contracts in more detail. Each commentor should discuss in detail the advantages and disadvantages for agencies, the incumbent vendor, and other vendors of our proposed three-year term and any other term requested by the commentor. Commentors should also answer the questions raised by the Justice Department on the feasibility and effects of a rule shortening the maximum length of subscriber contracts. Justice Dept. Comments at 57.

Enabling agencies to switch systems more easily also requires ending the vendors' practice of obtaining a new subscriber contract for each new piece of CRS equipment, a practice that can result in an agency having several CRS contracts expiring at different dates. An agency in that position can never switch to a new system without remaining obligated to continue leasing some equipment from the old vendor. Under our proposed rule, any additional equipment obtained by a subscriber would be covered by the subscriber's existing contract. Commentors should suggest alternative means of addressing this issue, and whether any provision on this issue is needed.

We are also proposing a prohibition of rollover clauses, since they unduly restrict the ability of subscribers to choose a new CRS.

4. *Minimum Use and Parity Clauses.* We also propose to prohibit minimum use clauses. Without such a prohibition, our proposal that subscribers should be free to use one terminal to gain access to any system would be ineffective, since the first vendor could require a high enough level of bookings that the subscriber could not as a practical matter take advantage of its ability to access the other three systems.

The minimum use clauses appear designed to preserve the vendors' market power in any event, not to ensure that the vendor's costs are offset by subscriber and participating carrier fees. As ASTA says, their effect is to protect a vendor's subscriber base even if other systems begin offering superior service or equipment during the contract term.

While American defends such clauses, it has failed to show that their benefits outweigh their injury to competition. American contends that the clauses are necessary to ensure that the vendor obtains the booking fees it expected to obtain, and the court in the Austin Travel and in re "Apollo" cases accepted such an argument made by United. However, a vendor can recover its investment through other means, *e.g.*, by imposing charges that will recover the cost without blocking the agency's ability to take advantage of new CRS technology and services provided by others. Furthermore, some portion of the booking fees, as shown, are monopoly rents. We do not see any public interest in preserving a vendor's ability to recover such monopoly rents.

Several commentors have noted that Sabre is adopting a fee structure that will penalize subscribers who fail to make a minimum number of bookings per month. *See, e.g.*, Aer Lingus Supp. Comments at 3–4; Alaska, America West & Midway Supp. Comments at 4–6. In our view, such a fee structure would also undermine the agencies' ability to use multiple systems. We also doubt that such a system of fees is required economically. We therefore propose to prohibit vendors from using a fee structure that increases charges for subscribers that do not satisfy volume booking standards.

Similarly, there appears to be no legitimate justification for parity clauses that require a subscriber to use a number of terminals for one vendor comparable to those used from another vendor (or that require the subscriber to use the first CRS for a number of bookings comparable to the number made on a second system). Such parity clauses are intended to, and as a practical matter do, discourage agencies from using more than one system. Although the Board thought its rules prohibited such clauses, NPRM at 35, vendors continue to use them. We

therefore propose to expressly prohibit parity requirements.

5. *Liquidated Damages.* The major vendors impose liquidated damages clauses establishing the damages due the vendor if a subscriber terminates its subscription contract before the end of the term. These clauses require a subscriber to pay the estimated cost of its lease payments and similar charges and the estimated booking fees that the vendor would have received had the agency continued to use the system. Although a number of parties have urged us to proscribe such clauses, we believe such action is unnecessary.

Without the liquidated damages clause, a vendor would still be entitled to recover actual damages if a subscriber breached its contract, and the actual damages could exceed the liquidated damages provided under the major vendors' current contracts. Thus, if fear of damage claims is keeping agencies from switching CRSs, the best cure would be shortening the maximum contract term. If we shorten the maximum contract term, a prohibition against liquidated damages clauses would be less necessary, since a vendor's conversion of an agency in the middle of its CRS contract's term should not result in unduly high damages.

The vendors' clauses also deter agencies from switching systems because they include lost booking fees as an element of damages. Our proposals on minimum use clauses should end this problem, since a proscription of minimum use clauses would eliminate a vendor's expectation of obtaining additional booking fees. The subscriber would then have the right to obtain an additional system and use it in preference to the original system. In that event, a vendor could not include lost booking fees in the liquidated damages.

However, if we find that vendors may require a multi-year term for their subscriber contracts, they should be able to enforce the subscriber's obligation to subscribe for the term fixed by the contract. We therefore decline to propose a prohibition of all liquidated damages clauses.

We find unnecessary rules prohibiting other vendor practices, *e.g.*, treating discounts and bonuses as debts which must be repaid if the subscriber contract is terminated before its expiration, even though they discourage agencies from switching systems before their current subscription contract expires. Shortening the maximum contract term should adequately alleviate the restraints created by such practices.

6. *Tying of Airline Benefits to CRS Subscriptions.* A vendor's offer of increased airline commissions or other benefits to an agency in return for the agency's use of its CRS presents obvious competitive problems, for it enables a carrier dominating a regional airline market to use that dominance as leverage in competing for CRS subscribers. Since an agency's ability to provide the best service for its clients depends on its ability to obtain such favors as waivers of discount fare restrictions and permission to book travellers on overbooked flights, Marketing Report at 25, a vendor that refuses to provide such favors to nonsubscribers will have a powerful weapon for gaining CRS subscribers. *See, e.g.*, ARTA Comments at 3–4; Justice Dept. Comments at 50–51. In addition, agencies often need override commissions to support the services demanded by their clients and to attain reasonable profit levels. The most attractive override commission program is frequently the program offered by the airline with the largest market share at the agency's city. Many agencies believe that they are more likely to obtain an override program from an airline if they use its CRS. Marketing Report at 25–30. *See also* Justice Dept. Comments at 25–27.

The Board's rule prohibits the tying of commissions to the "use" of a particular CRS but does not define "use". Our Enforcement Office as a result has interpreted the rule as clearly prohibiting the tying of commissions to an agency's use of a system for bookings but not clearly prohibiting the tying of commissions to an agency's subscription to a system. *AA Cruise and Travel et al.* v. *Delta Air Lines et al.*, Order 90–1–31 (January 17, 1990) at 4. However, as shown by the comments in this proceeding, a number of industry participants believe that the rule was intended to prohibit the tying of commissions with agency subscriptions to a particular CRS. *See, e.g.*, Justice Dept. Comments at 26, citing documents discussing the tying of commissions and subscriptions; American Comments at 15–16.[12] Moreover, the Marketing Report reads the rule as prohibiting the tying of commissions to CRS subscription. Marketing Report at 91. Given the vendors' other contract practices (*e.g.*, minimum use and parity clauses), an agency's subscription to a CRS seems equivalent to a commitment to use the system.

We propose to clarify the rule so that it expressly prohibits the tying of commissions to an agency's choice of a system. As the Justice Department reasons, allowing a vendor airline to condition commission payments on the agency's choice of a system provides an airline that dominates a city the ability to use its airline market power to pressure agencies in that city to subscribe to its system. The dominant carrier's ability to exercise such pressure will strengthen its share of the local CRS market, and that will reduce airline competition given the difficulties faced by other carriers in competing with a vendor airline.

The Justice Department, however, suggests that the rule should be significantly strengthened, because otherwise vendors can still use their market power in their hub markets to secure dominance in the CRS market. Justice Dept. Comments at 50–51. The Justice Department accordingly suggests extending the tying rule to include offers of special fares, additional services (*e.g.*, priority waitlisting), and any airline-related benefit, although it concedes such a rule would be difficult to enforce. On the other hand, the proposed rule should prevent vendors from openly relying on airline perks to sell their CRSs, and it might encourage travel agencies to complain if they were being denied benefits. *Id.* at 51–52.

American similarly proposes a requirement that vendors and subscribers sign disclaimers that an agency's commissions are not dependent on its choice of a CRS whenever a subscription contract is signed and whenever an agency is offered more than the standard commission rate. American Comments at 16–17. Hewins Travel also asks that the rule be strengthened. Covia contends instead that we should enforce the current prohibition against tying. Covia Comments at 34–35. In contrast, Northwest and TWA assert that the rule should be scrapped, since the rule allegedly discourages conversions and CRS competition. ARTA asserts that the tying prohibition should be strengthened by requiring that airlines treat all agencies equally in the provision of sales benefits such as discount fare waivers.

We believe for the reasons given by the Justice Department that the tying of commissions and other airline marketing benefits (*e.g.*, allowing agents to sell seats on overbooked flights and to bypass restrictions on discount fares) to the agency's choice of its CRS may be

[12] Those commentors who read the rule as prohibiting the tying of commissions to CRS subscriptions complain that the rule has been ineffective. Documents submitted by the Justice Department indicate that several vendors may have induced agencies to switch CRSs by offering them override commission programs. Justice Dept. Comments, App. at 40, 43. *See also* Marketing Report at 91.

anticompetitive when done by an airline operating or affiliated with a system. We therefore request parties to comment on the Justice Department proposal that the rule be extended to cover all marketing benefits.

As a practical matter, however, making such a prohibition effective appears difficult. The parties to a tying agreement are not likely to complain when commissions are unlawfully conditioned on the agency's use of a particular CRS. One possible enforcement mechanism would be a rule requiring annual notice to subscribers from system vendors and owners that tying is prohibited and a certification by system vendors and owners that they have so notified their subscribers (a similar provision appears in section 13 of the Canadian CRS rules). American's proposal that offers on non-standard commissions be in writing and accompanied by a certification that the commission offer is not tied to the use of the offeror's CRS may also warrant further consideration. Parties should comment on these suggestions.

Given the difficulties of enforcing the prohibition against tying, we encourage commentors to suggest other methods for making the prohibition more effective, should we determine that its adoption would be justified. If we cannot create an adequate means of enforcing the Justice Department proposal, we would be reluctant to adopt it.

Although ARTA suggests that airlines should be required to make all marketing benefits equally available to all agencies, we are unwilling to propose such a requirement here. We appreciate the belief of many agencies that the airlines' practice of limiting such benefits to a chosen few agencies is unfair and reduces competition among agencies. However, a prohibition against this practice does not seem clearly needed to prevent vendor abuses of CRS market power.

7. Regulation of Other Contract Provisions. ASTA and ARTA ask that we regulate vendor contract practices in certain other respects. ASTA suggests that we require vendors to file with us copies of all subscriber contracts (without price terms) to help us enforce the rules on contract practices and monitor vendor conduct. We decline to adopt this proposal, for we doubt that it would help much in ensuring that our regulations are followed. For example, the tying of airline marketing benefits normally is not done by written contract but through informal understandings and implied threats. ASTA's proposal thus would not help us enforce the prohibition against tying. The proposal would also impose a substantial burden on us and the vendors in view of the number of contracts and the likelihood that many contain special clauses.

ASTA complains that two contract provisions commonly imposed by the vendors—a waiver of the vendor's liability for negligence and a forum-selection clause requiring that all suits be brought in the vendor's home state—are unfair. ARTA similarly complains that it is unfair for American to sue Sabre subscribers in Texas, when the subscriber is a small agency located far from Texas. However, as with ARTA's proposal to make all airline service benefits equally available to all agencies, these clauses do not seem to have the kind of impact on airline or CRS competition that would normally justify our adopting regulations prohibiting them.

SAS and the Orient Airlines urge us to require vendors to keep their subscribers from using back-office systems to evade a carrier's cancellation of their authority to represent the carrier. We believe this matter would be better handled through an industry agreement or perhaps by private lawsuits against the offending agencies.

L. CRS Contracts

The rights and obligations of the providers and users of CRS services are determined by their contracts as well as our rules. The parties' willingness to carry out their contractual obligations, however, depends in large part on whether they receive the rights established by our rules. For example, if we proscribe minimum use clauses and allow subscribers to use a single CRS terminal for access to all CRSs, the subscribers' acceptance of a vendor's potentially higher CRS charges would reflect their expectation that they would receive the benefits created by our rules.

We propose to require contracts between vendors, on the one hand, and participating carriers and subscribers, on the other hand, to incorporate certain provisions of these rules which affect the parties' contractual relationship. The parties should be able to litigate in court the rights and obligations created by these rules when they affect their contractual relationship, *e.g.*, when disputes arise over the accuracy of a vendor's bill for booking fees, the accuracy and timeliness of a vendor's practices for loading fares and schedules, or the reasonableness of a subscriber's request to attach third-party hardware to its CRS equipment. Such disputes raise the kind of issues typically handled by the courts in contract cases and should rarely require our transportation expertise for their resolution.

The provisions which would be included in participating carrier contracts are those requiring unbiased CRS displays, requiring nondiscriminatory terms for participation, enhancements, equal functionality, and marketing data, and would include the participating carrier's obligation to provide accurate and complete information on its services. The provisions which would be included in subscriber contracts are those governing the use of third-party equipment and software, the use of a single terminal for access to several systems, and the restrictions on subscriber contracts, including the prohibition against tying.

M. Enforcement of the Rules

To ensure compliance with the proposed rules, we wish to consider creating a new method for enforcing them, arbitration. The only avenue available now is an enforcement proceeding conducted by us. Limiting enforcement to this single avenue seems unwise, given the limited resources available for our enforcement work and the potential complexity of many CRS cases. We therefore propose to allow arbitration of CRS claims.

Requiring that disputes be resolved through arbitration when requested by a complaining party should provide a means of obtaining a timely hearing for claims that a vendor or other person has denied them their rights. We could review an arbitrator's award if requested by a party to the proceeding.

This proposal is consistent with the Board's original views on enforcement issues. The Board had initially proposed arbitration as a procedure for resolving booking fee disputes, NPRM at 48, but chose not to finalize the proposal, Final Rule at 38–39. Despite the Board's ultimate conclusion, we believe that arbitration may provide the best possible avenue for adjudicating disputes about a number of CRS rule provisions. For the reasons given by the Board, an arbitration requirement would clearly be within our statutory authority. Moreover, creating a right to arbitration should alleviate the concerns of those commentors who complain that we have not effectively enforced the current rules.

Not all CRS disputes appear suitable for arbitration, but disputes over the right to use third-party hardware and software, the loading of airline fares and schedules, the adequacy of booking fee bills, and the tying of airline marketing benefits and commissions appear to be

appropriate cases for such a procedure. We ask parties to comment on whether arbitration would be effective, whether more (or fewer) types of disputes should be subject to arbitration, and whether we should prescribe any specific procedures for arbitration. Parties should also address what standard of review should be used by us in reviewing an arbitrator's award and whether the kind of relief available in an arbitration should be restricted to cease and desist orders.

N. International Issues

Since some foreign CRSs in the past have discriminated against U.S. carrier services, our rules exempt a U.S. vendor from complying with the rules insofar as a foreign carrier is concerned if that carrier or its affiliate operates a CRS that does not display the flights of all U.S. carriers equally with the foreign vendor's flights, § 255.9(b).

American suggests amending the rule to require all U.S. vendors to retaliate if a foreign carrier or affiliate discriminates against the display of any U.S. carrier services. American Comments at 19. Northwest and TWA make several suggestions on improving the ability of U.S. vendors to obtain fair treatment abroad, and they also contend that the rules should prohibit a foreign airline from owning a share in a U.S. CRS if the foreign carrier owns a share in a foreign system that discriminates against U.S. airlines. SAS contends that retaliation should not be made mandatory. We have decided to continue retaliation as an option rather than as an obligation binding on all U.S. vendors. If a foreign carrier's discrimination is sufficiently prejudicial and unjustifiable, we have the authority to order all U.S. vendors to retaliate against the foreign carrier and will do so., *See, e.g., American Airlines* v. *British Airways*, Order 88–7–11 (July 8, 1988). As a result, we find unnecessary the suggestions by Northwest and TWA that foreign carriers be prohibited from owning a share in a U.S. CRS if they are affiliated with a discriminatory foreign system and that U.S. vendors be given immunity from the antitrust laws for discussions on retaliating against foreign vendors.

ECAC and the European Community propose that we modify our rule by including a notice provision similar to the European Community rule, which requires a vendor wishing to engage in retaliation to notify the European Commission 14 days before doing so. A notice provision seems reasonable, so we are proposing it. We do not wish to go further, however, and delay a single vendor's retaliation until we have affirmatively found that reasonable grounds exist for it. If the foreign carrier subject to retaliation believes the U.S. vendor's conduct is not justified, it may file a complaint against that vendor with us.

ECAC and the European Community have also requested that we modify the rule to clarify that a U.S. vendor may retaliate only if the foreign vendor does not provide nondiscriminatory treatment for U.S. carrier services. These commentors read the current rule's requirement of "equal treatment" as compelling the foreign vendor to provide equal treatment even if the U.S. carrier services are inferior to the vendor's services. Although this reading is not consistent with the intent, we will modify the rule to provide for nondiscriminatory treatment.

We see no reason to limit the discriminatory treatment justifying retaliation to discriminatory displays, however. We propose to authorize retaliation if participation by U.S. carriers in the foreign system is conditioned on discriminatory terms.

O. Sunset Date for Rules

The Board rules required us as the Board's successor to undertake a review of the rules a year before their expiration and provided that the rules would expire December 31, 1990, unless readopted. Our ANPRM asked commentors to address the issue of whether new rules should include a sunset date. 54 FR at 38873. In response, the parties have suggested various dates for a new termination of the rules or for a new review of them.

We have tentatively determined that we should again establish a sunset date and thus require a review of the rules in five years. While we recognize that technological developments and the carriers' responses to revised rules may make an earlier review appropriate, we are reluctant to commit ourselves now to an earlier review in light of the effort required for such a proceeding. If technological developments make an earlier review or amendment of the rules advisable, interested parties may petition for such action.

P. Effective Date of Rules

We anticipate that some commentors may argue that one or more provisions of the proposed rules should take effect on a delayed schedule due to the difficulty or expense of compliance if such a provision became effective thirty days after publication of the final rule. Commentors who believe that additional time is needed for compliance with a proposal should so state in their comments and explain why.

Q. Divestiture

No one has suggested in this proceeding that we should propose rules requiring vendors to divest themselves of their systems. Alaska, America West, and Midway consider divestiture to be a possible remedy for CRS competitive problems, but only if accompanied by rules prohibiting the systems' new owners from selling bias and discriminatory treatment, rules which these airlines doubt would be within our regulatory authority. We are not proposing divestiture in this proceeding.

Proposed Regulatory Impact Analysis

A. Background

Executive Order 12291 requires each executive agency to prepare a regulatory impact analysis for every "major rule". The Order defines a major rule as one likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposed regulations constitute a major rule, since they would almost certainly have an annual impact on the economy of $100 million or more. The Department has prepared a preliminary regulatory impact analysis. A copy has been placed in the docket of this proceeding and is available for public comment. The statement concludes that the benefits of each of the major provisions of the proposed rules appear likely to outweigh its costs. The record, however, does not contain enough information to enable us to estimate very precisely the costs and benefits of the proposed rules. We therefore invite commenters to provide additional information on these issues.

Under the current rules, the vendors obtain two major benefits from owning a CRS: They can charge booking fees well above competitive levels, and they obtain substantial incremental revenues from travel agencies subscribing to their systems.

B. Benefits

The ultimate goal of our regulatory policy is to promote consumer welfare by reducing the cost of air transportation. We believe that the proposed rules would help achieve that goal. Increased airline competition promises immediate benefits to

consumers and serves to encourage technological change, innovation, and productivity. The proposed rules would benefit travellers by increasing competition in the CRS and airline industries. Competition in the CRS industry would be promoted by creating an environment that would make it easier for subscribers to switch vendors, to access multiple CRSs, and to use third-party hardware and software. Competition in the airline industry would be promoted by reducing the amount of incremental revenues.

In general, the rules that we are proposing or requesting comment on (i) would ensure that the accuracy and timeliness of the fare and service information displayed in CRSs for participating air carriers is comparable to that of vendor airlines; (ii) would reduce the likelihood that CRS-owning airlines could use their dominance in airline markets to increase their control of CRS markets; and (iii) would reduce the market power of the CRS vendors over subscribers and participating airlines.

There is a theoretical argument that airline competition could generate an inefficient equilibrium with wasteful expansion of small-scale service and lower load factors. If adopted, our proposed rules could conceivably sacrifice potential economies of scale in CRS and airline markets. We are not in a position to evaluate these claims. Against these hypothetical static advantages must be set the dynamic benefits of competition, including incentives for technological innovation and improved productivity. The overriding benefit of greater competition is, of course, its downward pressure on fares resulting in expanded consumption.[13]

It has been established public policy for a century and an integral part of the Department's mandate to proscribe conduct that tends to unfairly limit competition. We do not regard it as necessary to justify the objective of more competitive markets by weighing their ultimate efficiency against that of monopoly. If our rules prevent anticompetitive conduct at reasonable cost, ignoring the potential sacrifice of monopoly scale economies, we consider that a sufficient basis for their adoption.

Travel agents are in the best position to bargain with the vendors for lower CRS fees and higher quality service. To maximize their bargaining power, agents must be able to easily switch CRSs. But without changing current institutional arrangements—*i.e.*., as long as airlines pay booking fees but have limited ability to influence which CRS agents subscribe to and which enhancements are used to make a reservation—granting agents greater freedom to switch CRSs could result in higher booking fees. If agents can switch CRSs more easily, vendors would compete more aggressively for subscribers, thereby increasing their costs and encouraging booking fee increases. Thus rules granting travel agents greater freedom to switch CRSs should be accompanied by rules that would reduce incremental revenues, and prevent vendors from tying travel agency commissions to the use of their CRS. Our proposed rules seek to accomplish these goals.

The continuing evolution of computer technology and the agencies' use of personal computers have made it possible for agencies to perform some data storage and processing functions that were traditionally performed by the CRS vendors. Vendors now limit their subscribers' ability to use third-party hardware and software. If agencies had greater access to third-party hardware and software, they could organize information on airline and other travel services more efficiently and in ways that better meet their customers' needs. Thus if our proposed rules are adopted, travel agents should become more productive. The Department of Justice also states that this rule could reduce travel costs for the public, since it would be easier for agents to identify the best service.

Competition in the airline industry would be fostered through lower CRS costs and fees and a reduction in the vendors' incremental revenues. We cannot estimate precisely the proposed rules' effect on the vendors' costs and fees or on airline competition and air fares. However, the rules would increase airline competition by reducing the costs of non-vendor airlines and the smaller vendors and by increasing these carriers' share of traffic. More rivalry in most airline markets would result in lower air fares. If we also adopted a rule limiting booking fees, the lower fees would result in lower airline costs and fares and increased air travel. If booking fees reflected the major vendors' unit costs, the average price of a domestic airline segment could fall by as much as one percent. A one percent decline in fares would thus increase the demand for air travel by almost one percent.

Incremental revenues would be reduced by the proposed requirement of equal functionality, the agents' ability to use third-party hardware and software to obtain better information on airline services, and increased competition for subscribers, which should encourage vendors to improve the functionality of their CRSs.

Small differences in the ease and reliability with which the services of different carriers can be examined and booked are important to agents. At present, CRS vendors streamline procedures for entering their own bookings. Also, as CRSs have developed and promoted enhancements to attract subscribers, agents have come to take these enhancements for granted, and their denial to participating carriers can have a distorting effect on booking decisions similar to that of exclusion from a CRS. We are therefore requesting comment on proposals requiring equal functionality for certain key functions. By making it easier for agents to book flights on participating air carriers and by improving the accuracy of the flight information available to agents, equal functionality would raise the booking shares of participating airlines. In addition to raising their share of bookings, equal functionality could produce significant cost savings for participating airlines. Because of poor functionality and related booking errors, some air carriers must now devote significant resources to correcting these errors.

Equal functionality also would improve the productivity of travel agents and their ability to find the best possible services for their customers; it would also reduce the error rate in bookings. The vendors' current architecture requires agents to go through additional procedures to obtain the most accurate information and bookings on non-vendor airlines. The additional procedures are sufficiently burdensome that they deter agents from using such features as direct access.

We are not proposing a rule limiting booking fees, although we are willing to consider the issue further. The benefits of competition in the airline industry are diminished by excessive booking fees, which restrict the aggregate demand for air travel and financially weaken non-vendor carriers. These fees impose a significant cost burden on most airlines, although the burdens do not fall equally on all CRS vendors or between vendor and non-vendor airlines. Booking fees

[13] More actual and potential airline competitors in most city-pair markets would result in lower average fares. Thomas Gale Moore, "U.S. Airline Deregulation: Its Effects on Passengers, Capital, and Labor," Journal of Law and Economics, 29, April 1986, 1–28; Steven Morrison and Clifford Winston, "Empirical Implications and Tests of the Contestability Hypothesis," Journal of Law and Economics, 31, April 1987, 53–66; and Severin Borenstein, "Hubs and High Fares: Dominance and Market Power in the U.S. Airline Industry," Rand Journal of Economics, 20, Autumn 1989, 344–365.

produce excess profits for the largest vendors, but profits are not the only economically unjustifiable element of CRS costs. In a more competitive CRS industry, vendors would not subsidize agency automation in order to attract subscribers and enhancements would have to test their gains in productivity against their costs.

As discussed below, however, the various booking fee rule proposals have disadvantages that seem to outweigh their potential benefits.

C. Costs

We are proposing to readopt the Board's rules and to strengthen them. Letting the current CRS rules expire would not significantly reduce industry costs. The Board did not expect its rules to impose significant costs on the CRS, travel agency, and airline industries. In addition, the costs incurred in complying with the rules are largely non-recurring (*e.g.*, the reprogramming costs incurred in complying with the Board rules). There are, of course, a few continuing costs imposed by the rules, such as public notification by the CRS vendors of the display algorithms they use, but these costs are probably negligible.

The proposed rules introduce several changes in required procedures for loading flight information and constructing primary displays: (1) Participating air carriers would be allowed to request specific connecting points using the same procedures now available to vendor airlines; (2) a minimum of 15 single connecting points (up from nine) and six double connections must be made available to participating airlines; and (3) the vendors must use the same procedures for loading their own flight data and the data of participating carriers.

None of these provisions should significantly increase the vendors' costs. Reprogramming display algorithms is relatively simple. In terms of computer operations, the requirement that vendors and participating airlines use the same procedures for requesting connections and loading flight information should work to reduce the vendors' costs. Moreover, the requirement to use a greater number of connecting points would impose minimal additional costs, since all CRSs now have this capability.

Under one proposed rule on which we are requesting comments, by January 1, 1992, each vendor must make available on nondiscriminatory terms to all participating airlines subscriber transaction capabilities (including information displays and response processing capabilities) that are no less functional, timely, accurate or efficient to use than those offered to the vendor airline. Other service enhancements would have to be offered to participating airlines on nondiscriminatory terms and could not be retained by the vendors for their exclusive use.

Since investments would have to be made to develop software and increase computer and telecommunications capacity if these rules were adopted, higher costs would be imposed on the vendors. Our only estimate of the vendors' costs comes from a System One Corporation officer. He estimates that the cost to each CRS vendor could be as much as $5 to $10 million. However, several of the key functional features called for in the proposal already are being developed by the vendors. Moreover, to the extent that enhanced CRS functionality reduces system bias and incremental revenues and improves the accuracy and timeliness of the information available to travel agents, the CRS vendors would be providing a higher level of service, which should improve travel agency productivity.

Participating air carriers would have to incur $2.5 to $5 million in software development costs, but they would presumably only make such expenditures if the value to them of improved functionality (*i.e.*, the value of reduced architectural bias) was greater than its cost.

We think it likely that agent demand, the relatively modest costs, and the ban on discrimination among participating carriers would ensure that equal functionality is made available to all carriers that would find it beneficial. Nevertheless, it is still possible that fees would be set above compensatory levels, allowing vendors to retain a portion of the rewards of market power that this rule would otherwise deny them. We request comments on this subject.

The proposed rules on subscriber contracts are likely to have some disadvantages. Without changing current institutional arrangements—i.e., as long as airlines pay booking fees but have limited ability to influence which CRS agents subscribe to or which service enhancements they use to make a reservation—simply granting agents greater freedom to switch CRSs will not reliably limit booking fees. In fact, if it were easier for travel agents to switch CRSs, vendors might compete even more aggressively for subscribers, further increasing their costs, and compelling an increase in booking fees.

Furthermore, while greater freedom to switch systems would not reduce the revenue a vendor derives from an individual booking transaction, it would deny the vendor the expectation of receiving most of an agent's booking fee revenues. Therefore, the structure of charges to agents would inevitably change. Charges for terminals, connections, and service would have to be set at compensatory levels if there were no guarantee that the equipment would be used.

It is also uncertain whether enhanced freedom to switch systems will reduce concentration in CRS markets. The largest systems may enjoy technological innovations or scale economies unavailable to smaller competitors. With greater freedom to switch systems, agents could take advantage of these benefits, further raising concentration. Alternatively, the power of locally dominant airlines to secure dominance in CRS markets is now restrained by agents' contracts with other vendors. Our proposed rules might make it easier for a locally dominant vendor airline to cajole or coerce agents into signing a contract for its CRS.

The requirement that vendor-agency contracts be renegotiated more frequently would impose higher transaction costs on the parties. Even today, however, the vendors frequently renegotiate their subscriber contracts well before they expire.

Our proposal that contracts between vendors and participating airlines and between vendors and subscribers must incorporate certain rule provisions that affect the parties' contractual relationships should impose minimal additional costs; indeed, by better specifying the contractual relationships between the parties, this rule should reduce potential arbitration and litigation expenses.

The commentors' proposed booking fee rules contain different explicit or implicit divisions of CRS costs between airlines and travel agents (the Justice Department's alternative proposal would charge passengers and agents but not airlines). In principle, however, the difference among these rules that would decide if competition can be relied on to restrain CRS revenues is whether they prevent fees paid by airlines from recovering more than the total of CRS costs. Regardless of the share assigned to each party, if vendors must charge agents for their services in order to operate profitably, agents will be motivated to choose the cheapest system.

Failure to ensure that the CRS with the lowest cost per booking would have an advantage in obtaining subscribers is the chief defect of the present rules and the proposal to freeze booking fees at current levels. A rule requiring equal

division of costs between airlines and agents would be potentially weakened in the same way because the agent would bear only half of any additional cost in selecting a more expensive system, so his incentive to economize will be limited. In addition, equal division of costs would involve much of the administrative complexity and accounting ambiguities of "reasonable" fee regulation. Under either of these proposals, the vendors would incur greater costs because of the accounting and reporting requirements imposed. The federal government also would incur costs of administering the regulation.

The proposal to require agents to pass booking fees on to customers directly might give agents some incentive to economize on CRS services, but it would almost certainly have only a limited impact, since CRS-related costs are a relatively small portion of the price of the average airline ticket and because it is difficult for the typical customer to assess the relative value of CRS and travel agency services.

The proposal with the strongest theoretical justification is the "zero-fee" rule. This would provide the same marginal incentives to agents and would be free of administrative costs. The difficulty with this proposal is that it would require major changes in the way the industry conducts its business.

The "zero-fee" rule would compel agents to negotiate with airlines and establish procedures to obtain compensation for all legitimate CRS-related costs. For example, there might be an increase in the standard commission rate or a surcharge for booking services added to the standard commission. The route by which these changes would be realized is uncertain and may be especially risky for the weakest members of both the airline and the travel agency industries.

If all markets function efficiently to pass savings on to the consumer, we should not be concerned about the distributional implications of agency commission rates. However, we cannot be sure that adoption of this proposal would not offer new avenues for the coordinated expression of market power on either the agents' or the airlines' side. It may therefore be prudent to refrain from committing our authority to a theoretically beneficial but radical solution.

It should also be noted that intensified competition on the basis of CRS fees may be inconsistent with a more competitive structure of the CRS industry. Because of substantial differences in the CRS vendors' costs, no system to restrain CRS fees is likely to both reduce the major vendors' supracompetitive profits and allow the smaller CRS vendors to earn a normal rate of return.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96-354) is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

The analysis is required to describe the need, objective, legal basis for, and flexible alternatives to the agency's proposed action. These requirements have been met through the NPRM and the regulatory impact analysis. In addition, an analysis must describe the small business entities to which the proposed rules would apply, the proposed rules' reporting, record keeping or other compliance requirements, and any other federal rules that may duplicate, overlap, or conflict with the proposed rules.

If adopted as proposed, our rules would have a significant economic impact on a substantial number of small business entities. In particular, the rules would affect travel agencies and air carriers, including regional airlines.[14] In addition, the rule giving travel agencies more freedom to use third-party hardware and software and to use a CRS terminal to access other databases would benefit small business entities.

The use of travel agencies for both personal and corporate travel has been growing. In 1988, agents booked 81 percent of U.S. air carrier passenger sales, compared to 56 percent before deregulation. Agency sales increased to $72 billion in 1988 from $19 billion a decade earlier. The number of agency locations has also grown. Since 1978, the number of agency locations has more than doubled from approximately 14,800 to over 35,000 today. The travel agency business is highly fragmented. In 1989, most travel agency locations—60 percent—were single location offices.

The most important distinction between agencies involves their size, not their type of business. Size generally results in differences in sophistication and product needs, in price sensitivity, and in purchasing power; size also determines which factors are important in an agency's choice of a CRS. Although concentration in the travel agency industry remains quite low, and the industry remains competitive, the larger agencies have been expanding their share of the industry's revenues. The largest agency locations, those with annual revenues of $5 million or more, increased their share of the industry's revenues to 33 percent in 1987 from 24 percent in 1983. The growing concentration in the travel agency industry stems in large part from the largest agencies' efforts to satisfy the changing needs of corporate clients.

Our proposed rules should increase the efficiency of the travel agency industry. For example, agents would have greater access to third party computer hardware and software, which would enable them to modify the information presented on their CRSs in ways that would help them better serve their clients. Moreover, each CRS vendor now prohibits agencies from using their CRS terminals to obtain access to another CRS. If agencies were able to use their terminals to obtain access to any system, they would be more likely to use multiple CRSs. Since agents could then get better information and booking capabilities on air carriers besides their vendor airline, they would be more likely to book on other air carriers. If agents had convenient access to different CRSs, the vendors would be forced to compete more on the quality of their CRS services. Other firms could also enter the business of supplying CRS services and travel information databases to agencies.

Agents also should benefit from the elimination of CRS bias, which is a major objective of our proposed rules. Reduced bias should increase agency productivity, since agency personnel will no longer have to take time to overcome it.

The rules to reduce contract restrictions between CRS vendors and travel agents will also benefit agents by increased competition among the CRS vendors for subscribers. Since the travel agency industry is so competitive, most of the price and service benefits secured from vendors will be passed on to customers.

Allowing agents greater freedom to use multiple CRSs and reducing the maximum term of contract between vendor and subscriber to three years may result in greater transaction costs. However, an agency's decision to use more than one CRS or to adopt third party hardware or software reflects a management decision as to what is in the firm's best interest. If management decides to use multiple CRSs or adopt

[14] Regional air carriers typically operate equipment of under 60 seats in scheduled passenger service between smaller communities and larger hub airports. Most regional air carriers have annual revenues of less than $100 million.

third party hardware and software, presumably the benefits of these services must be judged to outweigh their costs (i.e., fees and transaction costs).

Under several proposals, travel agents could face higher costs for CRS services. In particular, a rule regulating or reducing booking fees could lead to higher fees for subscribers. (In 1988, the major vendors generated between 60 and 70 percent of their direct CRS revenues, not including incremental revenues, from booking fees; the remainder came from subscriber fees.) Because vendors compete aggressively for agents, however, they have an incentive to minimize fee increases to subscribers. In any event, faced with higher CRS costs travel agents would attempt to negotiate higher commissions from air carriers. We expect that most travel agents would be able to recoup additional CRS costs and fees through higher commissions, although agents would incur additional transaction costs.

Our proposed rules overall would have a beneficial effect on most air carriers, especially non-vendor airlines. Reducing incremental revenues, which would be achieved by the elimination of architectural bias, would make it easier for non-vendor airlines to enter markets and compete. Moreover, if CRS bias is reduced, non-vendor airlines would not have to pay travel agents as much in commission to overcome the effects of the bias. Lower booking fees would also lower airline costs, thereby encouraging the demand for air travel. Further, by standardizing procedures for the loading and dissemination of airline market information, airlines will be able to compete on a more equal basis.

As indicated, our proposed rules would allow subscribers to use third-party hardware and software in conjunction with their CRS equipment unless that use would damage the system. Vendors now limit their subscribers' ability to use such products, as shown by the comment of Megadata. The firms that produce hardware and software for automated travel agencies tend to be small business entities. Our proposal thus should expand the market for this class of small business entity. Similarly, the proposal that subscribers be able to access any database from a CRS terminal would give new firms a better opportunity to market travel-related databases to travel agencies and thus would also help small business entities.

Our proposed rules do not contain any direct reporting, recordkeeping, or other compliance requirements that would affect small business entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

The rules proposed in this notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the proposed rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting, and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to revise 14 CFR part 255 to read as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

Sec.

AUTHORITY: 49 U.S.C. 1302, 1324, 1381, 1502.

§ 255.1. Purpose.

(a) The purpose of this part is to set forth requirements for the operation by air carriers and their affiliates of computer reservations systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2. Applicability.

This rule applies to air carriers and foreign air carriers that themselves or through an affiliate own, control, operate, or market computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation and of other airline services through such systems. Each carrier that owns, controls, operates, or markets a system shall ensure that the system's operations comply with the requirements of this part.

§ 255.3 Definitions.

Affiliate means any person controlling, owned by, controlled by, or under common control with a carrier.

Availability means information provided in displays with respect to the seats a carrier holds out as available for sale on a particular flight.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 C.F.R. 298.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

Discriminate, discrimination, and *discriminatory* mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory

Display means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

Integrated display means any display that includes the schedules, fares, rules, and availability of all or a significant proportion of the system's participating carriers.

On-time performance code means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 C.F.R. part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

Participating carrier means a carrier, including a system owner, that has an agreement with a system vendor for display of its schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

Service enhancement means any product or service offered to subscribers or participating carriers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or issue tickets for air transportation.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40), that holds

itself out as a neutral source of information about or tickets for, the air transportation industry and that uses a system.

System means a computerized reservations system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to make reservations and to issue tickets.

System owner means a carrier that holds an equity interest in a system or that has an affiliate that owns such an equity interest.

System vendor means a carrier or its affiliate that controls or operates a system.

§ 255.4 Display of information.

(a) All systems shall provide an integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No vendor shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(b) In ordering the information contained in an integrated display, system vendors shall not use any factors directly or indirectly relating to carrier identity.

(1) System vendors may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including the system vendor, and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) System vendors shall provide to any person upon request the current criteria used in ordering flights for the integrated displays and the weight given to each criterion and the specifications used by the vendor's programmers in constructing the algorithm.

(c) System vendors shall not use any factors directly or indirectly relating to carrier identity in constructing the display of connecting flights in an integrated display.

(1) System vendors shall select the connecting points (and double connect points) to be used in the construction of connecting flights for each city pair on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the system vendor, and to all markets.

(2) System vendors shall select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including the System vendor.

(3) System vendors shall provide to any person upon request current information on:

(i) All connecting points and double connect points used for each market;

(ii) All criteria used to select connecting points and double connect points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3) (ii) and (iii) of this section.

(4) Participating carriers shall be entitled to request that a system vendor use one or more connect points (and double connect points) in constructing connecting flights for the display. The system vendor may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by the system vendor when it requests or causes its system to use specific points as connect points (or double connect points).

(5) When a system vendor selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and six double connect points for each city-pair, except that a vendor may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The vendor has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system vendor selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by itself or a participating carrier up to the maximum number of points that the system can use. The system vendor may use fewer than all the connect points requested by itself and participating carriers to the extent that:

(i) Points requested by the system vendor and participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The vendor has used all the points that meet those criteria.

(d) Each system vendor shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information or the information of a system owner. No system vendor may use procedures for providing information on its own services to its system that are not available to participating carriers. Each system vendor shall provide to any person upon request all current data base update procedures and data formats.

(e) System vendors shall use or display information concerning on-time performance of flights only in accordance with the provisions of this part.

(1) Within 10 days after receiving the information from participating carriers or third parties, each vendor shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system vendor shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(3) Except as otherwise specifically provided in this part, a system vendor shall not provide any information about on-time performance in a CRS on any air carrier or foreign air carrier unless that information is based on data reported to the Department. Any such information shall be displayed in an unbiased fashion and in the same manner for all participating carriers that report to the Department.

(f) Each participating carrier shall take such action as is reasonably necessary to provide complete and accurate information in a form such that vendors are able to display its flights in accordance with this section.

(g) A system vendor may make available to subscribers its internal reservations system display, provided that a subscriber and its employees may see such display only by requesting it for a specific transaction.

§ 255.5 Service enhancements

In the event that a system vendor offers a service enhancement to itself or any participating carrier, it shall offer the enhancement to all participating carriers on nondiscriminatory terms, except to the extent that such participation is not immediately feasible for technical reasons, in which event the system vendor shall make it available to

all participating carriers as soon as possible.

§ 255.6 Contracts with participating carriers

(a) No system vendor may discriminate among participating carriers in the fees for participation in its system, or for system-related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system vendor may condition participation in its system on the purchase or sale of any other goods or services.

(c) System vendors shall provide upon request to carriers current information on their fee levels and fee arrangements with other participating carriers. System vendors may not require a participating carrier to pay any fee unless the bill for such fee contains adequate information to enable the participating carrier to determine whether the bill is accurate.

§ 255.7 Vendor Participation in Other Systems

(a) Each system vendor and system owner shall participate in each other system and each of its enhancements (to the extent that such vendor or owner participates in such an enhancement in its own system) if the vendor of such other system offers commercially reasonable terms for such participation. Fees shall be presumed commercially reasonable if:

(1) They do not exceed the fees charged by the system of such system vendor or system owner in the United States or

(2) They do not exceed the fees being paid by such system owner or system vendor to another system in the United States.

(b) Each system vendor and system owner shall provide complete, timely, and accurate information on its airline schedules, fares, and seat availability to each other system in which it participates on the same basis and at the same time that it provides such information to the system that it owns, controls, markets, or is affiliated with. If a system vendor or system owner offers a fare or service that is generally available to subscribers to its own system, it must make that fare or service equally available for sale through each other system in which it participates.

§ 255.8 Contracts with subscribers.

(a) No subscriber contract may have a term in excess of three years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination, whether because of the addition or deletion of equipment or because of some other event.

(b) No system vendor may require, as a condition for the lease to a subscriber of additional system components, including software and enhancements, that the term of the contract for previously-leased system components be extended or that the term for the lease of additional components extend beyond the termination date of the contract for previously-leased system components. The bona fide offering of alternative lease periods for additional components at commercially reasonable rates shall be deemed not to conflict with this paragraph.

(c) No system vendor may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, no subscriber contract or contract offer may require the subscriber either to use a system for a minimum volume of transactions, or to lease a minimum number or ratio of system components based upon or related to:

(1) The number of system components leased from another system vendor or

(2) The volume of transactions conducted on any other system.

No subscriber contract or contract offer may vary the fees, charges or credits owed by a subscriber according to the number of transactions made on the vendor's system; in other words, any charge, fee, or credit must be constant regardless of the number of transactions made by the subscriber.

(d) No system vendor may require use of its system by the subscriber in any sale of its air transportation services.

(e) No system vendor may require that a travel agent use or subscribe to its system as a condition for the receipt of any commission for the sale of its air transportation services.

(f) No system vendor may charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.9 Use of third-party hardware, software and databases

(a) No system vendor may prohibit or unreasonably restrict, directly or indirectly, the interconnection of third-party computer hardware or software to system equipment, except on grounds of demonstrated technological incompatibility, or the use of vendor-supplied hardware and communications lines to access directly any other system or database.

(b) This section prohibits, among other things, the imposition of fees in excess of commercially reasonable levels to certify or interconnect third-party equipment, or to use vendor-supplied equipment to access any other system or database; undue delays or redundant or unnecessary testing before certifying or interconnecting such equipment or access; requirements or incentives that subscribers use the system vendor's system for any minimum number or percentage of the subscriber's bookings or penalties for failure to do so; refusals to provide any services normally provided subscribers because of the subscriber's use of third-party equipment or the subscriber's using the same equipment for access to both the vendor's system and other systems and databases; and the termination of a subscriber contract because of the subscriber's use of thirdparty equipment or use of the same equipment for access to the vendor's system and another system or database.

§ 255.10 Marketing and Booking Information.

(a) Each system vendor shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system.

(b) Each system vendor shall make available to all foreign participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to bookings on international services that it elects to generate from its system, provided that no system vendor may provide such data to a foreign carrier if the foreign carrier or an affiliate owns, operates, or controls a system in a foreign country, unless such carrier or system provides comparable data to all U.S. carriers on nondiscriminatory terms. Before a system vendor provides such data to a foreign carrier, it shall give written notice to each of the U.S. participating carriers in its system that it will provide such data to such foreign carrier.

(c) Any U.S. or foreign carrier receiving data on international bookings from a system vendor must ensure that no one has access to the data except its own personnel and the personnel of any outside firm used for processing the data on its behalf.

§ 255.11 Exceptions.

(a) The obligations of a system vendor under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee. A system vendor shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all

such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system vendor under this part shall not apply to any foreign carrier that operates or whose affiliate operates an airline computer reservations system for travel agents outside the United States, if that system discriminates against the display of flights of any United States carrier or imposes discriminatory terms for participation by any United States carrier in its computer reservations system, provided that a system vendor must continue complying with its obligations under this part until 14 days after it has given the Department and such foreign carrier written notice of its intent to deny such foreign carrier any or all of the protections of this part.

§ 255.12 Arbitration.

(a) Any claim by a participating carrier, subscriber, or system vendor that a participating carrier or system vendor has failed to comply with the obligations of §§ 255.4, 255.5, 255.6, and 255.10 of this part shall be resolved through arbitration on an expedited basis, if the party making the claim so requests. Any claim by a subscriber or system vendor that a subscriber or system vendor has failed to comply with the obligations of §§ 255.8 and 255.9 of this part shall be resolved through arbitration on an expedited basis, if the party making the claim so requests.

(b) At a party's request filed within 30 days of the service of an arbitrator's final decision, this Department may review that decision. Any arbitration award issued under this part must provide findings of fact and of law in sufficient detail to enable the Department to review such award.

§ 255.13 Contracts for system services

(a) Each carrier's participation in a system shall be governed by a contract between it and the vendor that shall require the vendor's compliance with its obligations under §§ 255.4, 255.5, 255.6, and 255.10 of this part and by the participating carrier with its obligations under § 255.4(f).

(b) Each subscriber's use of a system shall be governed by a contract between it and the vendor that shall require the vendor's compliance with its obligations under §§ 255.8 and 255.9 of this part.

(c) Either party to a contract required by this section shall be entitled to enforce such contract in a court of competent jurisdiction.

§ 255.14 Termination.

Unless extended, these rules shall terminate on October 31, 1996.

Issued in Washington, DC on March 13, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-6727 Filed 3-25-91; 8:45 am]

BILLING CODE 4910-62-M

federal register

Tuesday
March 26, 1991

Part III

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for January 1991; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53139; FRL 3885-2]

Premanufacture Notices; Monthly Status Report for JANUARY 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for JANUARY 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53139)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm EB-44, 401 M St., SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during JANUARY; (b) PMNs received previously and still under review at the end of JANUARY; (c) PMNs for which the notice review period has ended during JANUARY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during JANUARY; and (e) PMNs for which the review period has been suspended.Therefore, the JANUARY 1991 PMN Status Report is being published.

Dated: March 19, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for JANUARY 1991.

I. 133 Premanufacture notices and exemption requests received during the month:

PMN No.

P 91-0389 P 91-0391 P 91-0392 P 91-0393
P 91-0394 P 91-0395 P 91-0396 P 91-0397
P 91-0398 P 91-0399 P 91-0400 P 91-0401
P 91-0402 P 91-0403 P 91-0404 P 91-0405
P 91-0406 P 91-0407 P 91-0408 P 91-0409
P 91-0410 P 91-0411 P 91-0412 P 91-0413
P 91-0414 P 91-0415 P 91-0416 P 91-0417
P 91-0418 P 91-0419 P 91-0420 P 91-0423
P 91-0424 P 91-0425 P 91-0426 P 91-0427
P 91-0428 P 91-0429 P 91-0430 P 91-0431
P 91-0432 P 91-0433 P 91-0434 P 91-0435
P 91-0436 P 91-0437 P 91-0438 P 91-0439
P 91-0440 P 91-0441 P 91-0442 P 91-0443
P 91-0444 P 91-0445 P 91-0446 P 91-0447
P 91-0448 P 91-0449 P 91-0450 P 91-0451
P 91-0452 P 91-0453 P 91-0454 P 91-0455
P 91-0456 P 91-0457 P 91-0458 P 91-0459
P 91-0460 P 91-0461 P 91-0462 P 91-0463
P 91-0464 P 91-0465 P 91-0466 P 91-0467
P 91-0468 P 91-0469 P 91-0470 P 91-0471
P 91-0472 P 91-0473 P 91-0474 P 91-0475
P 91-0476 P 91-0477 P 91-0478 P 91-0479
P 91-0480 P 91-0481 P 91-0482 P 91-0483
P 91-0484 P 91-0485 P 91-0486 P 91-0487
P 91-0488 P 91-0489 P 91-0490 P 91-0491
P 91-0492 P 91-0493 P 91-0494 P 91-0495
P 91-0496 P 91-0497 P 91-0498 P 91-0499
P 91-0500 P 91-0501 P 91-0502 P 91-0504
P 91-0505 P 91-0506 P 91-0510 P 91-0511
P 91-0512 P 91-0513 P 91-0514 P 91-0515
P 91-0516 P 91-0517 P 91-0518 Y 91-0073
Y 91-0074 Y 91-0075 Y 91-0076 Y 91-0077
Y 91-0078 Y 91-0079 Y 91-0080 Y 91-0081
Y 91-0089

II. 262 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0393 P 84-0660 P 85-0433 P 85-0619
P 85-0730 P 86-0501 P 86-1322 P 86-1607
P 87-0105 P 87-0323 P 87-1555 P 87-1872
P 87-1881 P 87-1882 P 88-0217 P 88-0319
P 88-0320 P 88-0468 P 88-0831 P 88-0918
P 88-1020 P 88-1021 P 88-1035 P 88-1212
P 88-1460 P 88-1473 P 88-1618 P 88-1619
P 88-1622 P 88-1630 P 88-1631 P 88-1632
P 88-1753 P 88-1761 P 88-1783 P 88-1807
P 88-1809 P 88-1811 P 88-1937 P 88-1938
P 88-1980 P 88-1982 P 88-1984 P 88-1985
P 88-1995 P 88-1999 P 88-2000 P 88-2001
P 88-2100 P 88-2169 P 88-2196 P 88-2210
P 88-2212 P 88-2213 P 88-2228 P 88-2229
P 88-2230 P 88-2231 P 88-2236 P 88-2237
P 88-2484 P 88-2518 P 88-2529 P 88-2530
P 89-0089 P 89-0090 P 89-0091 P 89-0225
P 89-0254 P 89-0321 P 89-0385 P 89-0386
P 89-0387 P 89-0396 P 89-0538 P 89-0589
P 89-0721 P 89-0764 P 89-0769 P 89-0775
P 89-0776 P 89-0867 P 89-0957 P 89-0958
P 89-0959 P 89-0963 P 89-0977 P 89-0978
P 89-0979 P 89-0980 P 89-0998 P 89-1010
P 89-1038 P 89-1058 P 89-1062 P 89-1148
P 90-0002 P 90-0009 P 90-0158 P 90-0159
P 90-0211 P 90-0237 P 90-0248 P 90-0249
P 90-0260 P 90-0261 P 90-0262 P 90-0263
P 90-0321 P 90-0347 P 90-0360 P 90-0364
P 90-0372 P 90-0384 P 90-0404 P 90-0405
P 90-0406 P 90-0441 P 90-0456 P 90-0489
P 90-0550 P 90-0558 P 90-0559 P 90-0560
P 90-0564 P 90-0581 P 90-0603 P 90-0608
P 90-0643 P 90-0707 P 90-1280 P 90-1308
P 90-1311 P 90-1318 P 90-1319 P 90-1320
P 90-1321 P 90-1322 P 90-1338 P 90-1358
P 90-1364 P 90-1384 P 90-1413 P 90-1422
P 90-1464 P 90-1472 P 90-1473 P 90-1511
P 90-1527 P 90-1528 P 90-1529 P 90-1530
P 90-1531 P 90-1541 P 90-1555 P 90-1556
P 90-1564 P 90-1592 P 90-1650 P 90-1687
P 90-1718 P 90-1720 P 90-1721 P 90-1722
P 90-1723 P 90-1728 P 90-1730 P 90-1731
P 90-1732 P 90-1745 P 90-1785 P 90-1797
P 90-1809 P 90-1818 P 90-1821 P 90-1825
P 90-1830 P 90-1839 P 90-1840 P 90-1844
P 90-1845 P 90-1846 P 90-1893 P 90-1937
P 90-1965 P 90-1973 P 90-1984 P 90-1985
P 90-2000 P 91-0004 P 91-0011 P 91-0043
P 91-0051 P 91-0055 P 91-0065 P 91-0074
P 91-0075 P 91-0086 P 91-0087 P 91-0091
P 91-0100 P 91-0101 P 91-0102 P 91-0107
P 91-0108 P 91-0109 P 91-0110 P 91-0111
P 91-0112 P 91-0113 P 91-0118 P 91-0123
P 91-0124 P 91-0151 P 91-0165 P 91-0173
P 91-0174 P 91-0175 P 91-0176 P 91-0177
P 91-0178 P 91-0179 P 91-0180 P 91-0181
P 91-0182 P 91-0183 P 91-0184 P 91-0186
P 91-0187 P 91-0188 P 91-0202 P 91-0222
P 91-0225 P 91-0228 P 91-0229 P 91-0230
P 91-0231 P 91-0232 P 91-0233 P 91-0242
P 91-0243 P 91-0244 P 91-0245 P 91-0246
P 91-0247 P 91-0248 P 91-0252 P 91-0253
P 91-0272 P 91-0288 P 91-0304 P 91-0306
P 91-0328 P 91-0337 P 91-0339 P 91-0354
P 91-0356 P 91-0357 P 91-0358 P 91-0363
P 91-0365 P 91-0366

III. 123 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 88-0083 P 88-0353 P 88-0515 P 88-0576
P 88-1567 P 88-1568 P 88-2568 P 89-0326
P 90-0013 P 90-0220 P 90-0319 P 90-0669
P 90-1454 P 90-1525 P 90-1526 P 90-1624
P 90-1635 P 90-1636 P 90-1862 P 91-0012
P 91-0019 P 91-0020 P 91-0021 P 91-0022
P 91-0023 P 91-0024 P 91-0025 P 91-0026
P 91-0027 P 91-0028 P 91-0029 P 91-0030
P 91-0031 P 91-0032 P 91-0033 P 91-0034
P 91-0035 P 91-0036 P 91-0037 P 91-0038
P 91-0039 P 91-0040 P 91-0041 P 91-0042
P 91-0044 P 91-0045 P 91-0046 P 91-0047
P 91-0048 P 91-0049 P 91-0050 P 91-0052
P 91-0053 P 91-0054 P 91-0056 P 91-0057
P 91-0058 P 91-0059 P 91-0060 P 91-0061
P 91-0062 P 91-0063 P 91-0064 P 91-0066
P 91-0067 P 91-0068 P 91-0069 P 91-0070
P 91-0071 P 91-0072 P 91-0073 P 91-0076
P 91-0077 P 91-0078 P 91-0079 P 91-0081
P 91-0082 P 91-0083 P 91-0084 P 91-0085
P 91-0088 P 91-0089 P 91-0090 P 91-0092
P 91-0093 P 91-0094 P 91-0095 P 91-0096
P 91-0097 P 91-0098 P 91-0099 P 91-0100
P 91-0101 P 91-0102 P 91-0103 P 91-0104

P 91-0105 P 91-0106 P 91-0114 P 91-0115 P 91-0127 P 91-0128 P 91-0129 P 91-0130 Y 91-0068 Y 91-0069 Y 91-0070 Y 91-0071
P 91-0116 P 91-0117 P 91-0119 P 91-0120 P 91-0131 P 91-0132 P 91-0133 Y 91-0043 Y 91-0072 Y 91-0074 Y 91-0075
P 91-0121 P 91-0122 P 91-0125 P 91-0126

IV. 240 Chemical substances for which EPA has received notices of commencement to manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 82-0496	G Modified rosin resin.	December 12, 1990.
P 83-1033	G C6-8 carboxylic acid.	March 15, 1985.
P 84-0393	G 2-Chloro-*N*-methyl-*N*-substituted acetamide	August 27, 1984.
P 84-0956	G Polyester resin.	December 16, 1990.
P 85-0770	G 4-*N*-Alkoxyphenyl-trans-4-*N*-alkylcyclohexyl carboxylate.	November 20, 1990.
P 85-0774	G 4-(Trans-4-*N*-alkylcyclohexyl)-*N*-alkyl benzene.	November 20, 1990.
P 86-0029	G Methyl methacrylate, styrene, ethyl acrylate, polyfunctional monomer polymer.	January 24, 1986.
P 86-0427	G Acrylonitrile-acrylic-styrene polymer b	November 20, 1990.
P 86-0569	*N*-(3-(Dibutylamino)-1,3-(dibutylamino)-1,3-propadienylidene)-*N*-butyl-1-butanaminium chloride.	August 15, 1990.
P 86-1263	G Phosphoric acid, 1,2-ethanediyl tetrakis(2-chloro-1-methylethyl ester	December 16, 1986.
P 86-1489	G Poly(oxy-1, 2-ethanediyl), alpha-(nonylphenyl)-omega[(2-amino-2-methylethoxy)-poly(oxy(methyl-1,2-ethanediyl))].	August 23, 1988.
P 87-0723	G Metalated alkylphenol copolymer.	November 9, 1988.
P 87-1211	G Isocyanate terminated polyester/urethane polymer	November 9, 1990.
P 87-1406	G Fatty acid polyamine condensate.	December 6, 1990.
P 87-1501	1-Dodecanol; 2-octyl-1-dodecanol; 2-octyl-1-tetradecanol; 2-octyl-1-dodecanol; 2-decyl-1-dodecanol.	April 29, 1989.
P 87-1760	4,4'-Methylene-bis (oxyethylene thio) diphenol.	July 22, 1988.
P 88-0020	G Substituted aminophenyl substituted heteropolycycle, salt.	November 20, 1990.
P 88-0030	G Polyurethane	November 9, 1990.
P 88-0217	Tetrachloroethylene (solvent)	May 26, 1988.
P 88-0330	G Oligomeric aminoalkyl siloxane	December 11, 1990.
P 88-0626	G Alkylalkoxysilane.	May 25, 1989.
P 88-0831	Phenol, 4,4'-(9*H*-fluoren-9-ylidene)bis-.	August 27, 1989.
P 88-1022	Aluminum, oxo (ethyl-3-oxobutanato-*O,O*)	December 7, 1990.
P 88-1210	G Aliphatic triol, alkyl ether	December 3, 1990.
P 88-1303	G Halogenated hydrocarbon.	December 8, 1990.
P 88-1443	G Terpene phenolic resin.	December 7, 1990.
P 88-1496	G Sulfonyl benzene diazo substituted-naphthalene, alkali salt	November 19, 1990.
P 88-1516	G Polymer of an aromatic diisocyanate, alphatic polyesters, an aliphatic diol and an aliphatic diamine.	November 27, 1990.
P 88-1517	G Prepolymer of an aromatic diisocyanate with a diol and aliphatic polyesters.	November 27, 1990.
P 88-1582	G Phenolic-formaldehyde modified hydrocarbon resin.	December 5, 1990.
P 88-1583	G Long oil alkyd resin; based on mixed fatty acids.	November 14, 1990.
P 88-1587	G Acrylic polymer containing quaternary ammonium salts	November 13, 1990.
P 88-1588	G Styrenated acrylic functional polyol	November 8, 1990.
P 88-1647	G Branched hydrocarbon.	November 27, 1990.
P 88-1739	G Branched hydrocarbon.	November 27, 1990.
P 88-1753	G Bis(substituted)carbomonocyclic azo)-carbomonocyclicol	February 14, 1990.
P 88-1763	G Hydrochlorofluoroalkane.	November 21, 1990.
P 88-1879	G Styrenated methacrylate polymer.	January 3, 1989.
P 88-1976	G Polyimide	November 27, 1990.
P 88-2177	G Hydrochlorofluoroalkane.	November 26, 1990.
P 88-2391	G Substituted naphthalene diazo alkali salt.	November 7, 1990.
P 89-0124	G Halogenated polyacrylate/methacrylate.	December 3, 1990.
P 89-0126	G Styrenated acrylate-methacrylate.	December 6, 1990.

IV. 240 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 89-0226	3-Methyl-1,3-butanediol.	December 3, 1990.
P 89-0281	G Deep dye nylon 6.	December 3, 1990.
P 89-0318	G Aryl alkyl copolycarbonate resin.	November 12, 1990.
P 89-0381	G Substituted 4*h*-pyran.	October 23, 1990.
P 89-0606	G Epoxy-phenolic resin.	November 29, 1990.
P 89-0716	G Anhydride copolymer of methacrylate and alcohol half esters.	December 10, 1990.
P 89-0769	G Resorcinol-formaldehyde resin.	June 26, 1990.
P 89-0793	G Organo-epoxysilane.	September 20, 1989.
P 89-0826	G Alkylaryl sulfonic acid.	November 14, 1990.
P 89-0973	G Aromatic bis(allylphenyl)ether.	December 11, 1990.
P 89-1016	Sodium sulfoisophthalic acid; isophthalic acid; sebasic acid; 5-*t*-butylisophthalic acid; neopentyl glycol; ethylene glycol;diazo.	December 28, 1990.
P 89-1035	Methanone, bis(4-(2-(1-propenyl)phenoxy)phenyl)-.	December 11, 1990.
P 89-1068	G Alkylene diamine derivative.	December 19, 1990.
P 89-1072	G Acrylic acid ester.	January 7, 1991.
P 89-1139	G Amine salt of alkyl acid phosphate.	January 2, 1991.
P 90-0010	G Polymethacrylate acid derivative.	November 6, 1990.
P 90-0029	G Acrylonitrile copolymer A.	November 20, 1990.
P 90-0030	G Modified neutralized urethane polymer.	November 9, 1990.
P 90-0082	G Waterborne polyacrylourethane.	December 17, 1990.
P 90-0090	G Alkaline stillbene condensation product.	November 28, 1990.
P 90-0091	G Aryl novolac resin.	November 27, 1990.
P 90-0097	G Dithiophosphate amine salt.	January 2, 1991.
P 90-0231	Terpolymer of acrylic acid, metacrylic acid and itaconic acid, partially neutralized.	November 29, 1990.
P 90-0241	G Substituted azo naphthalenesulfonic acid, sodium salt.	November 19, 1990.
P 90-0353	G Alkylbenzene sulfonic acid.	December 18, 1990.
P 90-0359	Ammonium salt of 2-octadecenyloxymethy-2-octadecenoyl polyoxyethyloxymethyl-2-octadecenoyl polyoxyethylenemethyl-3-polyoxyethylene-propylpolyethane sulfate..	December 4, 1990.
P 90-0361	*N,N*-Bis (stearamide ethyl) diquanine.	December 4, 1990.
P 90-0407	G Ethenyl tris (1-methylethenyl) oxy)silane.	January 2, 1991.
P 90-0431	G Alkyl naphthenate.	December 3, 1990.
P 90-0456	G Alkylated sulfonate, amine salt.	December 11, 1990.
P 90-0462	G Reaction product of: soya oil phthalic anhydric-, benzoic acid, poly hydric alcohols dehydrated castor oil.	November 15, 1990.
P 90-0469	G Phosphate ester ethoxylate.	December 9, 1990.
P 90-0500	G Modified styrene-butadiene-vinyl chloride terpolymer latex.	November 13, 1990.
P 90-0521	G Polyester urethane polymer.	May 31, 1990.
P 90-0523	G Tantalum ethoxide.	August 27, 1990.
P 90-0524	G Polyester resin, with modified with dehydrated castor oil.	November 13, 1990.
P 90-0525	G Polyurethane prepolymer of aliphatic polyisocyanate, polyester polyols, butanediol, and *N,N*1,*N*1-tetrakis(2-hydroxypropyl)ethylene diamine..	June 7, 1990.
P 90-0527	G Diphenoxy.	August 31, 1990.
P 90-0530	G Isophthalic acid, polymer with monoethanolamine, benzoic acid, pentaerythritol, and alkyl diamine.	November 21, 1990.
P 90-0531	G Maleic anhydride based copolymer salt.	October 24, 1990.
P 90-0532	G Maleic anhydride based copolymer salt.	October 19, 1990.
P 90-0537	G Solution polyester.	August 7, 1990.
P 90-0546	G Epoxy and polyether modified silicone fluid.	December 18, 1990.
P 90-0547	G Amine and polyether silicone fluid.	December 18, 1990.
P 90-0549	G Benzoate ester.	October 7, 1990.
P 90-0561	4-Methylbenzenesulfonate-2-pentanol.	November 8, 1990.

IV. 240 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-0562	G 2-Ethylhexyl phosphoric acid oleylamine salt.	July 4, 1990.
P 90-0567	1-Butanone, 2-(dimethylamino)-1-(4-(4-morpholine)phenyl)-2-(phenylmethyl)-	November 13, 1990.
P 90-0569	G Methacrylate acrylic copolymer.	August 15, 1990.
P 90-0573	G Acrylic polymer.	July 20, 1990.
P 90-0575	G Groups and hydroxy terminated polyisocyanate.	August 16, 1990.
P 90-0577	G Polyamide.	September 13, 1990.
P 90-0585	G Polyether.	August 27, 1990.
P 90-0586	Acetic acid, hydroxyphosphono-, trisodium salt.	July 16, 1990.
P 90-0588	G Disubstituted naphthalene sulfonic acid salt.	January 11, 1991.
P 90-0592	G Polybisphenol-A phthalate.	June 30, 1990.
P 90-0597	L-Asparte acid, monoammonium salt.	July 27, 1990.
P 90-0601	G Acrylic polymer.	July 24, 1990.
P 90-0602	G Carboxylic acid modified vegetable oil.	September 4, 1990.
P 90-0606	G Sulfonated trisubstituted amine salt.	September 12, 1990.
P 90-0611	Butenedioic acid (E), diammonium salt.	July 27, 1990.
P 90-0612	G Aromatic aliphatic polyester.	July 17, 1990.
P 90-0613	G Dimerized C18 unsaturated fatty acid hexamethylenediamine caprolactam acid functional hydrocarbon copolymer.	November 19, 1990.
P 90-0616	G Halogenated hydrocarbon.	October 28, 1990.
P 90-0617	G Halogenated hydrocarbon.	October 28, 1990.
P 90-0624	G Substituted heterocycle.	January 4, 1991.
P 90-0626	G Compounds A and B substituted heterocycle.	November 30, 1990.
P 90-0629	G Polyalkylamine of chloromethylated, cross-linked polystyrene.	July 16, 1990.
P 90-0630	G Alkyl acrylate graft polymer.	October 13, 1990.
P 90-0631	G Unsaturated polyester resin.	October 31, 1990.
P 90-0634	G AMPs anionic polymer.	December 6, 1990.
P 90-0636	G Polyurethane.	August 6, 1990.
P 90-0637	G Acrylic copolymer, ammonium salt.	July 12, 1990.
P 90-0638	G Acrylic copolymer, monoethanolamine ammonium salt.	August 1, 1990.
P 90-0639	G Acrylic copolymer, sodium salt.	October 25, 1990.
P 90-0640	G Acrylic copolymer, 2-amino-2-methyl-1-propanol salt.	December 14, 1990.
P 90-0642	G Halogen substitution-modified methacrylate polymer.	September 27, 1990.
P 90-0644	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0645	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0646	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0648	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0649	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0650	G Blocked aromatic isocyanate.	September 13, 1990.
P 90-0651	G Substituted aryl nitrothiophene.	November 3, 1990.
P 90-0655	10*H*-Phenothiazine, 3,7-dioctyl-10-(2-propenyl).	August 21, 1990.
P 90-0656	G Rosin, phenolic modified alkyd.	August 23, 1990.
P 90-0658	G Polyacrylate.	September 13, 1990.
P 90-0660	Ammi visnaga.	October 29, 1990.
P 90-0666	G Cycloalkenol disubstituted alkyl ether.	September 5, 1990.
P 90-0667	Reaction products of epoxy phenolic novolac resin, tetrabromobisphenol A, methacrylic acid.	January 5, 1991.
P 90-0679	G Salts of arcylic-aromatic polymers.	November 2, 1990.
P 90-0708	G Epoxy urethane polymer.	November 21, 1990.
P 90-0709	G Epoxy acrylic polymer.	November 21, 1990.
P 90-0725	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0726	G Acrylic copolymers and salts thereof: styrene/acrylic copolymer and salts thereof.	October 15, 1990.
P 90-0727	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0728	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0729	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0730	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	November 6, 1990.
P 90-0983	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1000	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1283	G Zinc amine complex.	November 13, 1990.

IV. 240 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-1309	G Styrene/hydroxy acrylic polymer ammonium	November 19, 1990.
P 90-1337	G Polyurethane resin	December 26, 1990.
P 90-1350	Polymer of (alkyl) benzene carboxylic acid, (alkylene ether) glycol, triamino-*s*-thiazine and an (alkyl) cyclohexane-methenamine	November 20, 1990.
P 90-1354	G Aliphatic urethane alkyd polymer	December 27, 1990.
P 90-1359	1,3-Propanediol, 2-ethyl-2-(hydroxymethyl) polymer with 1-(2-hydroxyethyl)thiol-2-propanol and 2,2-thiobis(ethanol); silane, triethoxyl(3-isocyanatopropyl)-..	November 8, 1990.
P 90-1391	G Propenate-terminated alkyl and alkoxy substituted silane	December 15, 1990.
P 90-1407	G Styrene-*N*-butylacrylate-*N*-butylmethacrylate-maleic acid monobutyl ester copolymer	December 26, 1990.
P 90-1450	Di-*t*-butyldimethoxysilane	November 2, 1990.
P 90-1469	G Ethylene acrylic copolymer salt	November 19, 1990.
P 90-1475	G Modified acrylic polymer	October 11, 1990.
P 90-1482	G Chemically modified cyclodextrin	December 3, 1990.
P 90-1496	G Crosslinked acrylic polymer	November 19, 1990.
P 90-1532	G TDI reaction product with polimeric diol and triols	December 10, 1990.
P 90-1537	G Polyurethane	December 20, 1990.
P 90-1547	G Polyamide resin	November 18, 1990.
P 90-1548	G Polyurethane	December 1, 1990.
P 90-1565	Glycols, polyethylene, 3-sulfo-2-hydroxypropyl-*p*-(1,1,3,3-tetramethylbutyl) phenyl ether, monosodium salt	November 27, 1990.
P 90-1587	G Polyoxylated aromatic amine	November 13, 1990.
P 90-1588	G Aromatic nitrile	November 8, 1990.
P 90-1604	G Substituted organometallic compound	October 24, 1990.
P 90-1612	G Aromatic polyimide	November 5, 1990.
P 90-1613	G Tetrasubstituted naphthalene disulfonic acid, salt	January 2, 1991.
P 90-1615	Trimellitic anhydride; neodecanoic acid, oxiranylmethyl ester	December 18, 1990.
P 90-1616	G Acrylic ester modified polyurethane adduct	December 18, 1990.
P 90-1618	G Metal complex of sulfonated disubstituted naphthalene-azo-trisubstituted-phenyl-azo-disubstituted-phenyl-azo-monosubstitued phenyl sulfonate..	December 26, 1990.
P 90-1619	G Amine modified unsaturated phenol/oxirane polymer, esterified	December 18, 1990.
P 90-1620	G Amine modified unsaturated phenol/oxirane polymer, esterified	December 18, 1990.
P 90-1623	Propenoic acid, dodecyl ester; ethenyl benzene; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-methyl-, butyl ester; 2-propenoic acid, 2-methyl-, 2-methylpropyl ester; 2-propenoic acid, 4-hydroxybutyl, ester..	December 18, 1990.
P 90-1628	G Triphenylmethane dye	November 2, 1990.
P 90-1639	G 1,4-Butanediol, polymer with 2,2-dimethyl-1,3-propanedioic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl propanoic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hydrazine, and 1,1'-methylenebis(4-substituted cyclohexane..	December 5, 1990.
P 90-1642	G Dialkyl phosphorodithioate phosphate compound	December 27, 1990.
P 90-1643	G Dialkyl phosphorodithioate phosphate compound	December 27, 1990.
P 90-1662	G Polyurethane	December 20, 1990.
P 90-1663	G Polyurethane	December 20, 1990.
P 90-1674	G Acrylic polymer	November 30, 1990.
P 90-1681	G Polyacrylate elastomer	November 29, 1990.
P 90-1688	G Substituted benzofuran	December 2, 1990.
P 90-1691	G Styrene-acrylic polymer	November 7, 1990.
P 90-1746	G (Aryl)(arylheterocyclicalkylidienyl)pyrazolinone	October 31, 1990.
P 90-1763	G Hydroxy functional acrylic polymer	November 21, 1990.
P 90-1779	4-Tridecen-1-ol, acetate, (*z*)-	December 5, 1990.
P 90-1784	G Polyether diol and polyether triol and polyether diamine with dicyclohexylmethane-4,4'-diisocyanate	January 9, 1991.

IV. 240 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-1789	G Substituted triphenylmethane	December 18, 1990.
P 90-1790	G Substituted triphenylmethane	December 18, 1990.
P 90-1791	G Substituted phenyl acetate	December 18, 1990.
P 90-1794	G Polymer with carboxylated polyurethane, modified NBR and acrylated urethane	December 28, 1991.
P 90-1802	G Copolymer of acrylate esters modified with heterocyclic ring *N*-groups	November 29, 1990.
P 90-1803	G Copolymer of acrylate esters modified with heterocyclic ring *N*-groups	November 29, 1990.
P 90-1804	G Metalic borate alkanoate	November 15, 1990.
P 90-1808	2,5-Diethoxy-4-(4-morpholinyl)benzenamine, (H2SO4)x	January 14, 1991.
P 90-1817	G Aliphatic polyester polyurethane	November 20, 1990.
P 90-1837	Cyclopentanol, 2-(2-hexenyl)-	December 7, 1990.
P 90-1853	G Substituted aromatic heterocycle	January 4, 1991.
P 90-1854	G Substituted aromatic heterocycle	January 4, 1991.
P 90-1855	G Aromatic ether	January 4, 1991.
P 90-1856	G Substituted carboxylic acid	January 4, 1991.
P 90-1857	Substituted carboxylic acid ester	January 4, 1991.
P 90-1859	G Aliphatic polyester polyacid	January 14, 1991.
P 90-1872	Montan wax fatty acids, compounds with diethanolamine	December 19, 1990.
P 90-1879	G Modified acrylic resin	December 3, 1990.
P 90-1902	G Aliphatic epoxy ester anhydride polymer	December 3, 1990.
P 90-1909	G Alkylnaphthalene sulfonic acid, polymer with formaldehyde, sodium salt	January 4, 1991.
P 90-1914	G Sulfonate aromatic acid with diamine	December 6, 1990.
P 90-1922	G Modified bismaleimide resin	December 11, 1990.
P 90-1923	G Modified bismaleimide resin	December 11, 1990.
P 90-1928	G Shellac, acrylic copolymer, ammonium salt	December 27, 1990.
P 90-1939	G Modified styrene copolymer	December 22, 1990.
P 90-1954	G Blocked polyisocyanate of glycol-modified HDI trimer	December 19, 1990.
P 90-1978	G Carboxylated styrene acrylate copolymer	December 25, 1990.
P 90-1984	G Fatty acid polyamine condensate, phosphate ester salt	December 26, 1990.
P 90-1985	G Fatty acid polyamine condensate, phosphoric acid ester salt	December 26, 1990.
P 90-1989	G Biphenol glycidyl amino polyoxirane ether	January 2, 1991.
P 91-0015	Phosphinic acid, phenyl-, compound with 1,6-hexanediamine (2:1)	January 2, 1991.
P 91-0036	G Aromatic substituted pyrazoalone	January 10, 1991.
P 91-0038	G Polymethacrylate copolymer	January 16, 1991.
Y 88-0057	G Alkyl polyester polysiloxanes	December 16, 1990.
Y 89-0112	G Oil free alkyd	December 9, 1990.
Y 89-0226	G Polymeric sulfonic acid ester	November 27, 1990.
Y 90-0039	G Solid styrene/acrylic copolymer flake	December 14, 1990.
Y 90-0124	G Polyester polyol	November 30, 1990.
Y 90-0245	G Hydroxy acrylic resin	November 1, 1990.
Y 90-0257	G Polyurethane polyol	November 20, 1990.
Y 90-0259	1,4-Benzenedicarboxylic acid, polymer with 1,3-benzenedicarboxylic acid; 5-sulfo-1,3-benzenedicarboxylic acid, monosodium salt; 1,2-ethanediol and 2,2-propanediol.	August 28, 1990.
Y 90-0272	G Saturated polyester	November 14, 1990.
Y 90-0276	G Saturated polyester	November 7, 1990.
Y 90-0277	G Alkyd resin	December 20, 1990.
Y 91-0008	G Aqueous acrylic polymer and aqueous acrylic polymer salts	December 17, 1990.

IV. 240 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
Y 91-0009	G Aqueous acrylic polymer and aqueous acrylic polymer salts.	December 17, 1990.
Y 91-0016	G Pentaerythritol ester or esters of linseed fatty acid, sebasic acid succinic anhydride with some polyesters of same.	November 26, 1990.
Y 91-0018	Neopentyl glycol; propylene glycol; isophthalic acid; benzoic acid; maleic anhydride.	December 17, 1990.
Y 91-0031	G Diepoxide polyol.	December 2, 1990.
Y 91-0040	G Acrylic resin solution.	January 10, 1991.
Y 91-0042	G Acrylic-styrene modified epoxy-ester.	December 27, 1990.
Y 91-0044	G Polyester polyurethane with 5-sulfo-1,3-benzenedicarboxylic acid monosodium salt.	January 3, 1991.
Y 91-0061	G Alkyd.	January 3, 1991.

V. 31 Premanufacture notices for which the period has been suspended.

PMN No.

P 88-1783 P 88-2231 P 88-2237 P 90-1785 P 91-0043 P 91-0051 P 91-0055 P 91-0065 P 91-0069 P 91-0074 P 91-0075 P 91-0080 P 91-0086 P 91-0087 P 91-0091 P 91-0107 P 91-0108 P 91-0109 P 91-0110 P 91-0111 P 91-0112 P 91-0113 P 91-0118 P 91-0123 P 91-0124 P 91-0285 P 91-0351 P 91-0352 P 91-0363 Y 91-0071 Y 91-0073

[FR Doc. 91-7104 Filed 3-25-91; 8:45 am]

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H.J. Res. 133/Pub. L. 102-15

Authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week". (Mar. 21, 1991; 105 Stat. 46; 2 pages) Price: $1.00

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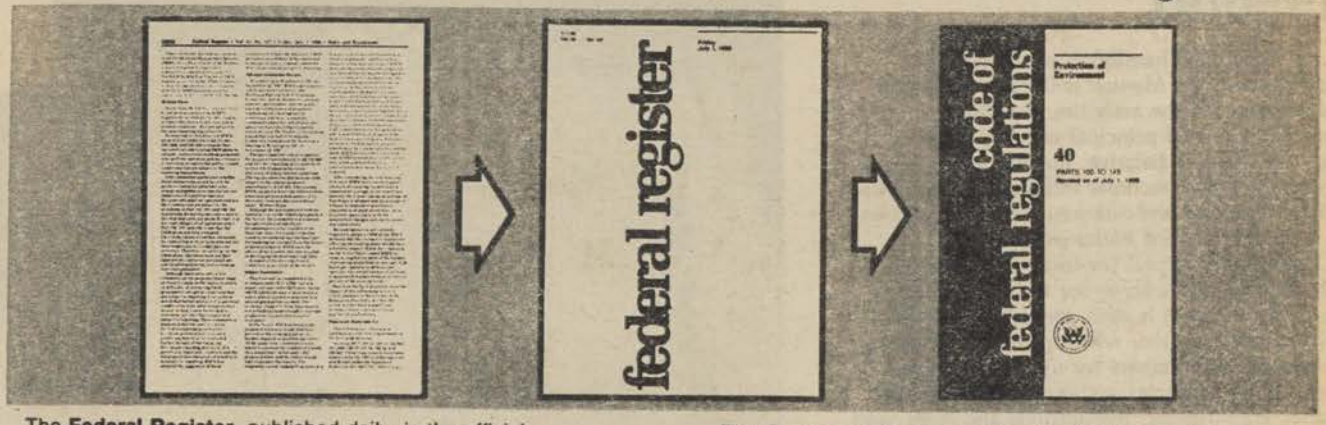

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